

82-1252

No. _____

Supreme Court, U.S.

FILED

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Alexander L. Stevas, Clerk

IN THE

Supreme Court of the United States

—•—
October Term, 1982

—•—
JESSE H. BECTON,

Petitioner,

v.

**DETROIT TERMINAL OF
CONSOLIDATED FREIGHTWAYS,**

Respondent.
—•—

**PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**
—•—

JEANNE MIRER

Barnhart and Mirer, P.C.

2900 Cadillac Tower

Detroit, Michigan 48226

(313) 961-6420

LARRY BENNETT

Bush, Bennett and Magid

2900 Cadillac Tower

Detroit, Michigan 48226

(313) 961-6420

Attorneys for Petitioner

Questions Presented:

1. Whether this Court's Opinion in Alexander v. Gardner-Denver, 415, U.S. 36, permits a court, in all cases, to hold that an arbitration decision in favor of the employer is sufficient to fulfill the employer's burden of articulating some legitimate non-discriminatory reasons for its actions.

2. Whether a District Judge in making broad, general and conclusory findings, and not revealing the factual or legal basis for his decision, complies with the requirements FRCP 52 (a).

3. Whether the Sixth Circuit should be required to come into conformity with the Fourth, Seventh and Ninth Circuits which have ruled under similar circumstances that broad general and conclusory findings do not satisfy the requirements of Federal Rule of Civil Procedure 52 (a).

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PETITION FOR A WRIT OF CERTIORARI TO
THE COURT OF APPEALS FOR THE SIXTH
CIRCUIT

JESSE BECTON petitions for a Writ of Certiorari, to review the Judgment of the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The Opinion of the Court of Appeals (App. 1A through 6A) is reported at 687 F2d 140. The Opinion of the District Court (App. 9A - 19A) is reported at 490 F. Supp. 464. An Order Denying Motion to Amend Judgment and Making Additional Findings of Fact (App. 20A, 21A) is not reported.

JURISDICTION

The Judgment of the Court of Appeals was entered on August 24, 1982 (App. 1A). A timely petition for rehearing and a suggestion for rehearing en banc was denied on October 27, 1982 (App. 8A). The Petition for Certiorari was filed within ninety (90) days thereof. Petitioner invokes the jurisdiction of this Court under 28 USC 1254 (1).

STATUTES INVOLVED

Federal Rule of Civil Procedures
RULE 52. Findings by the Court

(a) Effect. In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memorandum of decision is filed, it will be sufficient if the

findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b).

STATEMENT OF THE CASE

Petitioner, JESSE BECTON, who is half Black and half Seminole Indian, was discharged on May 14, 1979 after two and one-half years employment as an over the road truck driver for Respondent, Detroit Terminal of Consolidated Freightways. He filed a grievance pursuant to the grievance-arbitration clause of the contract in existence between the Respondent and Local 299 of the International Brotherhood of Teamsters. The Michigan Joint State Cartage and Over the Road Arbitration Committee (hereinafter Arbitration Committee) on July 9, 1979 upheld the discharge. On November 19, 1979 it refused to reconsider its decision.

On December 19, 1979, Petitioner filed a complaint along with a motion for a Temporary Restraining Order in the District Court for the Eastern District of Michigan¹. Petitioner brought his action under 42 U.S.C. 1981, and added a pendent state claim under the Michigan Elliot-Larson Civil Rights Act. M.C.L.A. Sec. 37-2101 *et seq.*, alleging that his discharge was both the result of racial discrimination, and retaliation for having previously filed charges with local civil rights agencies.

Petitioner contended, and introduced evidence to show: (1) that he was not guilty of the rule violations that he was discharged for (App. 22A - 35A);² (2) that in any event, the Respondent had a practice of disciplining Black drivers more harshly than White drivers for the same or comparable

¹ Petitioner filed for a Temporary Restraining Order because the Respondent at the time was anticipating a change of operations whereby The Detroit Terminal was to be closed to Over The Road Drivers. Petitioner anticipated that he would have significant difficulty prevailing and being made whole if he did not seek immediate relief.

² Petitioner was discharged for flagrant disobedience of (continued on next page)

offenses; (3) by White drivers that such disciplines occurred especially after Black drivers filed civil rights charges (App. 22A-74A).

Petitioner later substituted a Motion for Preliminary Injunction for his Motion for Temporary Restraining Order. Later the hearing on the Motion for Preliminary Injunction was combined with a trial on the merits.

Hearings were held on January 28, 19, & 30, February 20, 22, 25, 26 & 27 and May 1, 1980. Testimony was given by twelve witnesses and three witnesses testified through depositions. Over two hundred exhibits were introduced.

After trial, on June 5, 1980 the District Judge issued a Memorandum Opinion and Order in which he found Petitioner's case distinguishable from Alexander v. Gardner-Denver Co., 415 U.S. 36 (1974), in that Petitioner had not raised the issue of discrimination at the proceedings before the Arbitration Committee. Because of this difference the Court reasoned that while Petitioner had made out a prima facie case of discrimination, the Arbitration Committee's decision that there was apparent "just cause" under the contract to sustain the Respondent's actions was final and binding on the Court. Therefore, with respect to the employers' burden to rebut, the Court held the Arbitration decision sufficient so that it need not consider the evidence presented on this issue. (App. 18A). The District Court then in broad conclusory terms stated:

orders having allegedly refused to drop and hook a trailer at Respondent's Jackson Michigan Terminal. This was considered a violation of Rule 3(g) of the Uniform Rules and Regulations (hereinafter URR) that has governed the conduct of truck drivers in Respondent's employ since 1950. (App. 77A, 78A). The first offense under Rule 3(g) is a written warning. The second offense is discharge. Also under the URR any infraction for which a written reprimand is the punishment will be forgiven in six months. Infractions which require disciplinary time off will be forgiven after nine months.

"The inquiry now turns to whether the Plaintiff has shown that the just cause that did exist was merely pretext to cover up what was in reality a racially discriminatory discharge. Only by such a showing can the Plaintiff prevail in this action.

The Court finds that from the evidence produced in this case that the discharge was not a pretext to cover up racial discrimination nor was racial animus involved in the discharge.

The Court finds that although the Plaintiff had filed other civil rights claims and asserted his civil rights in other contexts, the Defendant did not act by way of retaliation in discharging him.

(App. 18A).

In response to this opinion, Petitioner made a motion to amend judgment and for supplemental findings. The District Court, while finding no reason to change its view of the law regarding the Gardner-Denver issue, augmented some of its findings of fact. The District Court said even if its view of the law were incorrect, the decision would not change. The Court stated:

Not only was the decision to discharge founded upon just cause so as to satisfy the employment contract, but it was based upon reasons appropriate under the law. The Court finds that the Plaintiff's employment history and the facts surrounding his failure to do the acts requested at the time of his discharge, shows that the actions of the Defendant were appropriate and that the stated reason for the discharge was not used as a pretext to cover up a racially discriminatory discharge. The evidence produced by the Plaintiff in an attempt to show that white drivers were not treated as severely was not directly on point and it failed to show by a preponderance of

the evidence that there existed any racial discrimination in connection with Plaintiff's discharge.

In addition, the evidence did not preponderate in favor of Plaintiff's claim that any of the Defendant's actions were in retaliation for the fact that Plaintiff had taken steps to assert his civil rights. (App. 21A).

A timely appeal was taken to the Sixth Circuit Court of Appeals.

The Sixth Circuit, reversed the District Judge's interpretation of Gardner-Denver as being "impractical and excessively narrow". However, the Appellate Panel did hold that:

Certainly the court may consider the arbitration decision as persuasive evidence that the grounds found by the arbitrator to be just cause for discharge under the collective bargaining agreement are sufficient to amount to just cause. The court should defer to the arbitrator's construction of the contract. Moreover, an arbitration decision in favor of the employer is sufficient to carry the employer's burden of articulating "some legitimate, nondiscriminatory reason for the employee's rejection." McDonnell Douglas Corp. v. Green, 411 U.S. at 802, 93 S. Ct. at 1824. See also Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 252-53, 101 S. Ct. 1089, 1093-94. (1981). (App.).

Although the panel agreed that the District Court had applied an improper legal standard, a remand was not ordered.

The Appellate Court, citing the District Court's Supplemental Order, stated:

we will not remand this case merely so the

court can reconsider the same evidence and inevitably reach the same result.
(App.6A)

Although the panel admitted that they might have reached a different conclusion de novo they did not find the District Judge's findings clearly erroneous. (App. 6A).

The Appellate Panel, however, characterized the District's Court's findings very differently than the District Court had. For example, the District Court had found that, "The evidence produced by Petitioner to show that White drivers were not treated as severely was not directly on point ..." The Appellate Panel characterized this as a finding that Petitioner "was treated no differently than non-minority employees." (App. 6A). Finally, the Panel rejected the argument that the District Judge's findings were inadequate under rule 52(a) of the Federal Rules of Civil Procedure.

REASONS FOR GRANTING THE WRIT

1. The Court of Appeals, correctly found the District Court had formulated an "impractical and excessively narrow application" of the holding in Alexander v. Gardner-Denver, supra when it declined to reconsider evidence previously submitted to the Arbitration Committee on the issue of just cause for Plaintiff's termination.

The Court of Appeals, however, as noted above went on to observe:

We do not hold that the arbitration decision is without significance. Certainly the court may consider the arbitration decision as persuasive evidence that the grounds found by the arbitrator to be just cause for discharge under the collective bargaining agreement are sufficient to amount to just cause. The court should defer to the arbitrator's construction of the contract. Moreover, an arbitration decision in favor of the employer is sufficient to carry the employer's burden of articulating "Some legitimate, nondiscriminatory reason for the employee's re-

jection." McDonnell Douglas Corp. v. Green, 411 U. S. at 802. See also Texas Department of Community Affairs v. Burdine, 450 U.S., 248, 252-53 (1981). (App. 5A).

Petitioner takes issue with the use of the mandatory language in the above passage, to wit: . . .The court should defer to the arbitrator's constructions of the contract, . . . and ... an arbitration decision in favor of the employer is sufficient to carry the employer's burden..."

The source of this concern is this Court's holding in Gardner-Denver where the Court states that an arbitral decision which is admitted as evidence should be "accorded such weight as the Court deems appropriate." Gardner-Denver, supra at 60. While not adopting any standards as to how the court should determine the weight to be given a particular arbitral decision, the Court, by way of footnote suggested, that the more the arbitration proceeding resembled a judicial proceeding, the more weight it should be given. Gardner-Denver, supra at 60. Logically, then, little or no weight could and should be given to an arbitration decision where the manner in which the decision was reached provided few if any procedural safeguards or considered any legal standards similar to Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000 e or 42 U.S.C. 1981.

Thus, under certain circumstances,³(and Petitioner would argue the present case is one of those)³, it may be perfectly appropriate for a court to give no weight and no deference to an abritrator's findings or interpretation of a contract.

³Under the Teamster Contract, a decision is made by a Committee made up of equal numbers of employer, and union representatives. The format of the hearings does not permit the grievant to speak or present witnesses, or to cross-examine witnesses against him. The Business Agent presents all the evidence on behalf of the grievant and the grievant can speak in response to questions. As the minutes of the meeting where Plaintiff's discharge was upheld show, (App. 79A) no reasons were given to support the Committee's (continued on next page)

To be consistent with the Supreme Court's holding in Gardner-Denver, the wording of the Court of Appeals decision ought to read: "the Court may defer to the arbitrator's interpretation of the Contract," and "an arbitration decision in favor of the employer may be sufficient to meet the employer's burden..." Although the Sixth Circuit is the first appellate court to consider this issue, its apparent conflict with the principles enunciated by this Court in Gardner-Denver warrants review by this Court.

2. The District Judge in his reported decision, after ruling that he would be bound by the arbitrator's "just cause" finding, made no further findings of fact or conclusions of law. In broad, general and conclusory terms the Trial Judge stated, in essence, that the evidence failed to show pretext, discrimination and/or retaliation. The findings in the District Judge's Supplemental Opinion are not much more specific. In general and conclusory terms the District Judge found there was "just cause" to terminate Plaintiff and that "the stated reason for the discharge was not a pretext." As to the evidence of White drivers, "it was not directly on point and it failed to show by a preponderance of the evidence that there existed any racial discrimination." (App. 18A, 19A, 121A). As to Plaintiff's retaliation claim, the District Judge again without any findings of fact, said the evidence did not "preponderate in" favor of Plaintiff's retaliation claim.

decision. Petitioner's case was only one among the approximately four hundred (400) cases brought for consideration by the Committee sitting on July 10-11, 1979. It was the 379th matter to be heard. Based on the number of cases heard by the Arbitration Committee in the two days of hearing, Petitioner calculates that the average amount of time afforded each case (for both presentation and decision) is approximately 8 minutes. For these reasons, the District Court, (consistent with Gardner-Denver, supra) instead of conclusively binding itself by the arbitrator's decision, should have given no weight to the decision.

This Court has the prime responsibility for the proper functioning of the federal judiciary. Part of that responsibility is to ensure that the Federal Rules of Civil Procedure are properly construed and followed. Petitioner will argue infra that there is a divergence of views in the circuits concerning the sufficiency of findings to comply with Rule 52(a) in employment discrimination cases which warrants the granting of the writ. Herein, however, Petitioner argues that broad general and conclusory findings which do not fully reveal the factual or legal bases for the Trial Judge's decision should not be deemed sufficient to satisfy the requirements of Rule 52(a).

As stated by Professor Moore:

The purpose of findings of fact is three-fold: as an aid in the trial judge's process of adjudication; for purposes of res judicata and estoppel by judgment; and as an aid to the appellate court on review.

5A Moore Federal Practice, 52.06 at p. 2706.

For the purposes of this case the observation of Judge Frank in U.S. v. Forness, 125 F.2d 928 at 942 (CA.2), is instructive:

"We stress this matter because of the grave importance of fact finding. The correct finding, as the near as may be, of the facts of a law suit is fully as important as the application of the correct legal rules to the facts as found. An impeccably 'right' legal rule applied to the 'wrong' facts yields a decision which is faulty as one which results from the application of the 'wrong' legal rule to the 'right' facts. The latter type of error, indeed, can be corrected on appeal. But the former is not subject to such correction unless the appellant overcomes the heavy burden of showing that the findings of fact are 'clearly erroneous.'

Because an error of law can more easily be corrected by

an Appellate Court than an incorrect finding of fact, it is absolutely essential that the Trial Judge's findings and conclusions reveal the legal principles followed as well as the facts found in support of the decision.

In Petitioner's case, the District Court's very broad and conclusory findings reveal neither the legal principles nor the facts found by the Judge to support his legal principles.

This is very evident especially with respect to Plaintiff's proofs on pretext. The District Judge stated in his reported Opinion, that he was following the principles of McDonnell Douglas v. Green, supra. However, after deciding that he was bound by the arbitrator's decision, he made no other findings except that there was no pretext, no discrimination, and no retaliation. (App. 18A, 19A). In his supplemental Order the District Judge found as to pretext that the evidence produced to show that White drivers were not treated as severely "was not directly on point". (App. 21A).

What legal standard was the Judge using to determine whether Petitioner had proven pretext? By stating evidence of White drivers was not directly on point was the Trial Judge saying that the only evidence relevant to show pretext is that White drivers under the exact same circumstances as Petitioner received different treatment? If so, this directly contradicts McDonnell Douglas v. Green, supra.

⁴In McDonnell Douglas v. Green, supra at 804, this Court states: Petitioner's reason for rejection thus suffices to meet the prima facie case, but the inquiry must not end here. While Title VII does not, without more, compel rehiring of respondent, neither does it permit Petitioner to use Respondent's conduct as a pretext for the sort of discrimination prohibited by Sec. 703 (a) (1). On remand, Respondent must, as the Court of Appeals recognized, be afforded a fair opportunity to show that Petitioner's stated reason for Respondent's rejection was in fact pretext. McDonnell Douglas, supra at 804 (emphasis added).

(continued on next page)

If not, what was the District Judge saying? If he was not applying an impermissibly narrow view of evidence which could be relevant to proving pretext, why did he fail to even mention or evaluate the broad categories of evidence presented by Petitioner to show pretext? These categories included: a) evidence that Petitioner was subjected to a direct racial slur from a supervisor, (App.34A, 35A); b) the evidence from three other Black drivers (who along with Petitioner constituted at least 40% of all Blacks who worked for the Respondent) (App. 80A) who testified that they had been subjected to similar treatment as Petitioner, especially after they filed civil rights charges (App. 35A - 74A); or c) the statistical evidence which showed that few if any Blacks worked in the Respondent's Detroit Terminal until two years before Petitioner was hired and that, after affirmative action pressure in the mid 1970's, the percentage of Black drivers, which hit a peak in 1976, began to drop (App. 42A, 80A); or d) evidence of the disproportionate number of discharges imposed on Blacks (App. 81A - 95A); e) evidence that the

In expounding on what evidence could be relevant to a finding of pretext, this Court stated:

Especially relevant to such a showing would be evidence that White employees involved in acts against Petitioner of comparable seriousness to the "stall-in" were nevertheless retained or rehired. Petitioner may justifiably refuse to rehire one who was engaged in unlawful, disruptive acts against it, but only if this criterion is applied alike to members of all races. Other evidence that may be relevant to any showing of pretext includes facts as to the Petitioner's treatment of Respondent during this prior term of employment; Petitioner's reaction, if any, to Respondent's legitimate civil rights activities; and Petitioner's general policy and practice with respect to minority employment. On the latter point, statistics as to Petitioner's employment policy and practice may be helpful to a determination of whether Petitioner's refusal to rehire Respondent in this case conformed to a general pattern of discrimination against Blacks. McDonnell Douglas, supra at 804-805.

Respondent had wide ranging discretion as to what discipline to impose. (App. 74A - 76A).

Furthermore, Petitioner submitted by way of testimony and documents evidence of seven (7) occasions where White drivers from the Respondent's Detroit Terminal had not been disciplined at all for refusing the same order that Petitioner was fired for allegedly refusing (App. 35A, 39A, 40A, 54A, 96A)⁵; documentary evidence was introduced to show that White driver King, who have flagrantly failed to call his dispatcher was not disciplined at all (App. 97A - 112A), whereas Petitioner under the exact same situation was discharged in January 1979 for flagrantly disobeying orders, (App. 113A, 114A); and evidence was introduced to show that White driver R. Glisson who had been given two 3(g) infractions in a six (6) month period was not fired. (App. 115A - 116A).

Despite this evidence, nowhere did the District Judge explain how this evidence was not directly on point, and why as a matter of law the Court did not evaluate the case under the standard in McDonald v. Santa Fe Trail Transportation Co., 427 U.S. 273, and its progeny. This line of cases holds that where a Plaintiff has made out a prima facie case of

⁵ Several of these incidents involved a White driver who claimed he had a bad back. Although Respondent in its Appeals Court Brief page 38 claimed this was a valid medical excuse, Respondent's accepting such an excuse is itself discriminatory since Mr. Kelley, who had a back injury, was told he could not come back to work until he was 100%. (App. 56A).

⁶ This discharge was reduced in the grievance procedure. It was this discipline in January 1979 which allowed the Respondent to discharge Petitioner in May since the 3(g) violation Petitioner was given in May constituted the second 3(g) violation within six months.

actual disparate treatment the Defendant must articulate a legitimate non-discriminatory reason for the disparity as well as a legitimate nondiscriminatory reason for the discharge Mosely v. General Motors 497 F Supp. 583 (F.D.. Missouri). Indeed, in light of the proofs, it was an error of law for the Court to analyze this case solely under the McDonnell Douglas v. Green, supra requirements.

Nowhere in the District Judge's reported or supplemental decision does he address the proper legal standard, either under 42 U.S.C. 1981 or under the pendent state law claims to be applied to the Petitioner's retaliation claim. Indeed the Sixth Circuit's decision does not even mention that claim. Far from providing the Court of Appeals with a specific basis for its decision, the District Court's Opinion and Supplemental Order raised many questions as to which legal standards it had applied. The Court of Appeals should not have attempted to decipher the District Court's bare bones opinions, especially since it had already overturned a central error of law that had colored the rationale of those opinions.

In Petitioner's case, as noted above, the Sixth Circuit panel, although finding that the District Judge had applied an erroneous legal standard, failed to remand. The Panel, despite the District Court's broad and conclusory findings, did precisely the opposite of what this Court in Kelley v. Everglades Drainage Dist. , 319 U.S. 415, instructed; they analyzed the record to try to supply findings which the trial Court failed to make.

The fact that the Court of Appeals panel changed the District Court's finding that the "evidence presented by Petitioner in an attempt to show that White drivers were not treated as severely was not directly on point.." to its finding that "he (Petitioner) was treated no differently than non-minority employees" shows the unacceptable risks inherent in an Appellate Court supplying the facts.

The Courts have carved out narrow exceptions to the general rule that cases will be remanded if the District Court applied an improper legal standard.

The Court of Appeals Panel attempted to fall into the exception that remand is unnecessary where the Appellate

Court has a complete understanding of the issues. See Swanson v. Levy, 509 F2 559 (1975).

As noted above, the District Court's failure to state the legal and factual bases for its decision deprived the Appellate Panel of a complete understanding of the issues, and this is further evidenced by the Panel's change in the District Court's findings of fact.

Further, remand need not occur if the record permits only one resolution of the factual issues. Kelley v. Southern Pacific Co., 419 U.S. 318. In this case the Panel admitted that they might have reached a different decision de novo. Thus, under this exception remand would have been required.

Apparently, the Appellate Panel was concerned that a remand meant inevitably the same result would be reached. Such speculation is not acceptable. If the District Judge by way of a remand were forced to clearly articulate his findings and conclusions, Petitioner would know whether he had applied improper legal standards (e.g. restrictions on the evidence relevant to pretext) in his evaluation of the evidence in this case. If another appeal were then necessary the Appellate Panel would not be placed in a position of having to guess or presume what the trial court found.

This Court has recently stated in Pullman Standard v. Swint, 102 S. Ct. 1981 that the finding of the existence or non-existence of intentional discrimination is a finding of fact. However, this Court in Pullman Standard, supra, did not just reverse, but remanded the case because the Court of Appeals had found the District Court had made certain legal errors in evaluating the evidence. Thus, this Court should remand this case and instruct the Trial Judge to make the proper findings and conclusions so that it may be properly determined whether the Trial Court made errors of law in its evaluation of the evidence.

3. The Courts of Appeals for the Fourth, Seventh and Ninth Circuits have ruled on the level of findings required by Rule 52 (a) of the FRCP in employment discrimination cases and all have reached a conclusion different from the Sixth Circuit's Opinion in Petitioner's case.

The Fourth Circuit, in Equal Employment Opportunity Commission v. United Virginia Bank/Seaboard National, 555 F2d 403 (GA 4 Cir.), in very similar circumstances to the instant case reversed and remanded with directions, the trial court's order.

The Panel stated at 405:

The findings of facts, on which the judgment was granted, were phrased in broad conclusory terms and did not include any subsidiary findings which would give appropriate support to the Court's conclusory findings. Thus, in dismissing individual discrimination claims, the Court's finding was that "the Court is of the opinion that the plaintiff has not borne the burden imposed on it in the McDonnell case." Previously in its opinion, the Court had stated the "requirements *** of the McDonnell case" but it did not indicate at any point in its opinion which requirement, as declared in McDonnell, was not proved by the Plaintiff.

In determining that Rule 52 (a) had not been complied with the panel in EEOC v. United Virginia Bank/Seaboard National, supra, went on that page to say:

When the trial court provides only conclusory findings, illuminated by no subsidiary findings or reasoning on all the relevant facts, as was the case here, there is not that "detail and exactness" on the material issues of fact necessary for an understanding by an appellate court of the factual basis for the trial court's findings and conclusions, and for a rational determination of whether the findings of the trial court are clearly erroneous. It was to assure that "detail and exactness" in the trial court's findings as a predicate for intelligent appellate review that Rule 52 (a) was adopted. The failure of the District Court to comply in this case with the basic requirement of the Rule for

detailed findings of fact compels us to remand the cause for detailed findings of fact and conclusions of law by the trial court.

In the Seventh Circuit in Worthy v. United States Steel, 616 F2d 698 (CA 7 Cir.), the court stressed the importance of the trial court making a thorough analysis of a Plaintiff's evidence of pretext. In the Worthy case the District Court had found that Mr. Worthy's safety record "placed him at the same level if not worse than Whites who were demoted." Therefore, he had not shown pretext (as a bad safety record could be a legitimate non-discriminatory reason for demotion of a crane man).

On Appeal Worthy contended that the District Court's findings were erroneous because the Court failed to consider the evidence in the record that Whites with worse records than Worthy were not demoted.

The Seventh Circuit, siding with Worthy, stated as follows:

Appellee may well be correct that the facts which it cited placed Worthy in a separate category which justified his harsher treatment. In order to determine comparability, however, the district court was obliged to conduct a thorough inquiry into the treatment of comparable employees. That inquiry could not stop with the determination that comparable whites were demoted. Before a finding could be made that there was no pretext, it was necessary for the district court to consider also the evidence presented by Worthy purportedly showing that there were comparable whites who were not demoted or not disciplined. Otherwise, an employer involved in racial discrimination could demote or discipline some whites as a token gesture to show similar treatment while leaving the majority of the favored employees free from any disciplinary action. Worthy, supra at 703.

In support of its remand the panel in Worthy, supra, at 704, further said:

Although the district court made the ultimate finding of comparability by its finding that Worthy's safety record "placed him at the same level, if not worse, as white cranemen who were demoted", it is not possible to ascertain from the opinion the factual basis for that ultimate finding. In the determination of comparability, the Supreme Court has cautioned that "precise equivalence" is not the ultimate issue. CF McDonald v. Santa Fe Trail Transportation Co., 427 U.S. at 283 n.11.

The Ninth Circuit in the recent case of Sumner v. San Diego Urban League, 681 F2d 1140 (9th Cir.) reversed and remanded a District Court's decision which had found that Plaintiff had failed to prove by a preponderance of the evidence that she was discriminated against and terminated by reason of her sex."

Commenting on the level of findings of fact necessary to comply with Federal Rule 52(a) the Panel said:

Although the plaintiff bears the ultimate burden of proving discrimination, the shifting intermediate burdens of going forward are intended to "bring the litigants and the court expeditiously and fairly to this ultimate question." Burdine, 450 U.S. at 253, 101 S. Ct. at 1093. The Findings of and Conclusions of Law under Rule 52 should serve rather than defeat that purpose, and that purpose can be served only if the findings and conclusions address the intermediate issues.

Sumner v. San Diego Urban League, supra at 1143.

The Panel then emphasized that because Burdine gave new emphasis to the importance of the McDonnell Douglas allocation of burdens and order of presentation of proof, that

to satisfy Rule 52 (a) in employment discrimination cases, the findings had to be so explicit as to give the appellate court a clear understanding of the trial court's decision.

The failure of the Sixth Circuit to remand Petitioner's case stands in stark contrast to the Fourth, Seventh, and Ninth Circuit's decisions. This Court should bring the Sixth Circuit into conformity with these other circuits.

This Court need not in this case decide the level of findings necessary in all employment discrimination cases to satisfy Rule 52 (a), but it should grant the writ, find the findings inadequate, and summarily remand this case for appropriate findings.

Respectfully submitted.

Jeanne Mirer
Barnhart & Mirer P.C.
2900 Cadillac Tower
Detroit, Michigan 48226
(313) 961-6420

Larry W. Bennett
Bush, Bennett & Magid
2900 Cadillac Tower
Detroit, Michigan 48226
(313) 961-6420

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Bush, Bennett and Magid

2900 Cadillac Tower

Detroit, Michigan 48226

(313) 961-6420

Attorneys for Petitioner

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No. 80-1543

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JESSE H. BECTON,*Plaintiff-Appellant,*

v.

**DETROIT TERMINAL OF CONSOLIDATED
FREIGHTWAYS,***Defendant-Appellee.*ON APPEAL from the
United States District
Court for the Eastern
District of Michigan.

Decided and Filed August 24, 1982.

Before: KENNEDY and MARTIN, Circuit Judges; and DUMBAULD, Senior District Judge.*

BOYCE F. MARTIN, JR., Circuit Judge. This appeal requires us to decide how much weight to give an arbitration decision in a section 1981 employment discrimination case. The court below found that it was bound by an arbitration decision which held that the plaintiff, Jesse Becton, was discharged for "just cause." As a result, the court refused to consider any evidence which Becton had previously presented at the arbitration hearing. *Becton v. Detroit Terminal of Consolidated Freightways*, 490 F.Supp. 464 (E.D. Mich. 1980). Becton asserts that the evidence he offered to challenge his discharge and the evidence required to support his claim of race discrimination are inextricably intertwined. On this basis, he

* Honorable Edward Dumbauld, Senior Judge, United States District Court for the Western District of Pennsylvania, sitting by designation.

argues that the District Court's ruling denied him the right to have his statutory claim fully heard. See *Alexander v. Gardner-Denver*, 415 U.S. 36 (1974). We agree and reverse that portion of the District Court's decision. However, we find that this error did not affect the ultimate outcome of the case and affirm the dismissal of Becton's claim.

Consolidated Freightways fired Becton from his position as an over-the-road driver for allegedly disobeying company orders. Becton filed a grievance which ultimately came before the Michigan Joint State Cartage and Over-the-Road Committee. The Committee, which consists of an equal number of union and management representatives, is authorized by the collective bargaining agreement to hear grievances. 490 F.Supp. at 466 n.1. Becton did not raise the issue of discrimination before the Committee; he argued only the issue of "just cause" under the contract. In an unwritten decision, the panel held that Consolidated had just cause to discharge Becton. Subsequently, Becton, who is half-Black and half-Seminole Indian, filed suit under 42 U.S.C. § 1981 against both the company and his union. Becton alleged that his termination was racially motivated and was in retaliation for civil rights charges he had filed against the company eleven months before his discharge.

The District Court dismissed the case against the union. 490 F.Supp. at 466. Becton has not appealed that decision.

Becton's claim against the company proceeded to trial. The District Court's analysis of Becton's case followed the framework established in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 801-804 (1973).¹ According to the *McDonnell Douglas* paradigm, the plaintiff must first make out a prima facie case by producing evidence (1) that he belongs to a racial minority, (2) that he was satisfactorily performing his job, (3) that despite this performance he was terminated,

¹ The Supreme Court recently refined the *McDonnell Douglas* burden of proof allocation in *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248 (1981).

and (4) that he was replaced by a non-minority worker. 490 F.Supp. at 465-66. At this point, the burden of production shifts to the defendant, who must "attempt to 'articulate some legitimate, non-discriminatory reason for the [treatment given the plaintiff].'" 490 F.Supp. at 466 (citations omitted). Finally, at the close of the defendant's presentation, the plaintiff has an opportunity to show that the employer's reasons were only pretexts which masked illegal discrimination. 490 F.Supp. at 466.²

The District Court correctly found that Becton succeeded in presenting a prima facie case under *McDonnell Douglas*. 490 F.Supp. at 466. In rebuttal, the company offered the arbitration decision that Becton had been terminated for "just cause." On the basis of its interpretation of *Alexander v. Gardner-Denver*, the District Court concluded that the Arbitration Committee's decision had a *res judicata* effect on subsequent section 1981 proceedings. It therefore declined to reconsider the evidence on the "just cause" issue and limited its inquiry to the question "whether the just cause which did exist was merely a pretext to cover up what was in reality a racially discriminatory termination." 490 F.Supp. at 470. The court found that Becton had failed to prove such a pretext and entered judgment for the company.

Alexander v. Gardner-Denver differed from the present case in that Alexander submitted both his discrimination and contract claims to arbitration whereas Becton's grievance involved only his contract claim. In *Gardner-Denver*, the Supreme Court held that the plaintiff was entitled to bring a Title VII discrimination action in federal court despite the arbitrator's adverse ruling on that issue. However, the Court did not indicate whether or not the arbitrator's disposition of the plaintiff's contract claim was binding on the trial court in

² Although this procedure was developed for cases brought under 42 U.S.C. § 2000e-5, the same procedure applies to cases brought under section 1981. *Long v. Ford Motor Co.*, 496 F.2d 500, 505 n.11 (6th Cir. 1974).

a subsequent Title VII proceeding. This, of course, is the precise question Becton raised below and has pursued on appeal.

The District Court reviewed the *Gardner-Denver* opinion and concluded that the Supreme Court's decision to except statutory discrimination claims from the general rule of finality of judgments should be narrowly circumscribed. Accordingly, the District Court held that Becton was entitled to a trial *de novo* on his discrimination claim but not to reconsideration of the evidence relating to his contract claim. In the District Court's judgment, the "just cause" issue did not involve "facts . . . relative to discrimination." 490 F.Supp. at 468. Thus, the court declined to reevaluate evidence rejected by the Arbitration Committee.

This is an impractical and excessively narrow application of *Gardner-Denver*. The District Court's distinction between the plaintiff's discharge on the one hand and his discrimination claim on the other attempts to draw a bright line in an area where there is actually considerable overlap. There is no realistic way to sever the discharge from the claim of discrimination because, according to the plaintiff, the discharge is the discrimination. An analysis of one must include consideration of the other because both involve the same operative facts. They cannot be considered in isolation from one another. Inasmuch as "just cause" or similar contract questions are an integral part of many discrimination claims, the better rule avoids judicial efforts to separate and classify evidence offered by the plaintiff under the heading of "discrimination" or "just cause." In our view, *Gardner-Denver* should not be read as a restriction on the extent to which a Title VII or section 1983 claimant is entitled to develop his evidence of discrimination.³

³ Although *Gardner-Denver* was brought under Title VII of the Civil Rights Act, the Court noted that section 1981 affords similar protection. 415 U.S. at 47 n.7.

We do not hold that the arbitration decision is without significance. Certainly the court may consider the arbitration decision as persuasive evidence that the grounds found by the arbitrator to be just cause for discharge under the collective bargaining agreement are sufficient to amount to just cause. The court should defer to the arbitrator's construction of the contract. Moreover, an arbitration decision in favor of the employer is sufficient to carry the employer's burden of articulating "some legitimate, nondiscriminatory reason for the employee's rejection." *McDonnell Douglas Corp. v. Green*, 411 U.S. at 802. See also *Texas Department of Community Affairs v. Burdine*, 450 U.S. 248, 252-53 (1981). However, to allow that decision to answer *conclusively* questions raised in the final step of the *McDonnell Douglas* analysis unnecessarily limits the plaintiff's opportunity to vindicate his statutory and constitutional rights.

In light of the foregoing discussion, we reverse the District Court's holding that it was conclusively bound by the arbitration panel's decision that Becton was discharged for just cause. We hold instead that a federal court may, in the course of trying a Title VII or section 1981 action, reconsider evidence rejected by an arbitrator in previous proceedings.

We now turn to the merits of Becton's case. Normally, when the trial court has applied an improper legal standard to the facts, the case should be remanded for reconsideration of the evidence in light of the correct standard. However, a remand is not necessary in this case for two reasons. First, Becton actually *did* submit all his evidence in the "pretext" phase of the case. Second, the lower court anticipated today's decision by issuing a supplemental Order Denying Motion to Amend Judgment and Making Additional Findings of Fact. The court stated:

First of all, had the court not found that it was precluded from deciding whether or not the plaintiff's discharge was founded upon just cause, it would have

found, based upon the evidence introduced at trial, that nondiscriminatory just cause did exist. Therefore, even if the plaintiff's view of the law is correct in this area, the result of the case would not be changed.

Since the court did in fact admit all of Becton's evidence, we will not remand this case merely so the court can "re-consider" the same evidence and inevitably reach the same result. We have reviewed the entire record, and although we might have reached a different decision *de novo*, we find that the lower court's findings of fact are not "clearly erroneous." Therefore, we affirm the District Court's order dismissing Becton's complaint. See Fed.R.Civ.P. 52(a). There is credible evidence to support the findings (1) that Becton violated a sufficient number of company rules to warrant his discharge and (2) that he was treated no differently from non-minority employees.

Finally, we find no merit in Becton's argument that the District Court failed to detail its findings of fact as required by Rule 52(a) of the Federal Rules of Civil Procedure. The reported decision, combined with the supplemental order, adequately provided this court with the specific basis of the District Court's conclusions. *Kelley v. Everglades Drainage District*, 319 U.S. 415, 422 (1943) (per curiam).

The judgment below is reversed in part and affirmed in part.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
NO. 80-1543

JESSE H. BECTON,

Plaintiff-Appellant

v

DETROIT TERMINAL OF CON-
SOLIDATED FREIGHTWAYS,

Defendant-Appellee

Before: KENNEDY and MARTIN, Circuit Judge;
and DUMBAULD, Senior Circuit Judge.

JUDGMENT

APPEAL from the United States District Court for the Eastern District of Michigan.

THIS CAUSE came on to be heard on the record from the United States District Court for the Eastern District of Michigan and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby reversed in part and affirmed in part.

Each party to bear how costs on appeal.

ENTERED BY ORDER OF THE COURT

John P. Hehman, Clerk

Dated: November 4, 1982

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

NO. 80-1543

JESSE H. BECTON,

Plaintiff-Appellant

v

ORDER

DETROIT TERMINAL OF CON-
SOLIDATED FREIGHTWAYS,

Defendant-Appellee

Before KENNEDY and MARTIN, Circuit Judges;
and DUMBAULD, Senior District Judge.*

On receipt and consideration of a petition for rehearing and suggestion for rehearing en banc in the above-styled case; and

No judge in active service in this court having moved for rehearing en banc and the motion therefore having been referred to the panel which heard the case; and

The panel having noted nothing of substance in said motion for rehearing which had not been carefully considered before issuance of the court's opinion,

Now, therefore, the motion for rehearing is hereby denied.

ENTERED BY ORDER OF THE COURT

Dated: October 27, 1982

*Honorable Edward Dumbauld, Senior United States District Judge for the Western District of Pennsylvania, sitting by designation.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

Civ. A. No. 79-74785

June 5, 1980

JESSE H. BECTON,

Plaintiff

v

THE DETROIT TERMINAL OF
CONSOLIDATED FREIGHTWAYS,

Defendant

MEMORANDUM OPINION AND ORDER
JOINER, District Judge

Plaintiff, half Black and half American Indian, brought suit in this court under 42 U.S.C. Sec. 1981 and M.C.L.A. Sec. 37.2801, alleging that his termination (along with the way in which the resulting grievance was handled) was racially discriminatory (Count I), and that he was retaliated against for filing Civil Rights charges (Count II). Named as defendants were Consolidated Freightways, his former employer and Local 299 of the International Brotherhood of Teamsters, his union.

(1) In a case of this sort, the burden of proof is always on the plaintiff to establish the fact of racial discrimination. Notwithstanding this burden of proof, there are times when the burden of producing evidence shifts to the defendant. McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed2d 668 (1973); Furnco Construction Co. v. Waters, 438 U.S. 567, 98 S.Ct. 2943, 57 L.Ed.2d 957 (1978); Board of Trustees v. Sweeney, 439 U.S. 24, 99 S.Ct. 295, 58

L.Ed.2d 216 (1978). At the outset of the trial, the plaintiff must produce evidence that would, if believed, establish a prima facie case of race discrimination. To do this, he must produce evidence tending to show:

- (i) that he belongs to a racial minority;
- (ii) that he was satisfactorily performing the job to which he was assigned;
- (iii) that despite this satisfactory performance, he was terminated; and
- (iv) that he was replaced by a white employee.

See Flowers v. Crouch-Walker Corp., 552 F2d 1277 (7th Cir. 1977); Potter v. Goodwill Industries, 518 F2d 584 (6th Cir. 1975).

(2) Once plaintiff has produced enough evidence to carry this initial burden, defendant then has a choice. He can produce no additional evidence on the issue of termination and rely on the hope that the fact finder will not believe all of the plaintiff's evidence. If defendant is not convinced that the fact finder will disbelieve the plaintiff's "prima facie" case, he will then attempt to "articulate some legitimate, non discriminatory reason for the (treatment given to the plaintiff)." McDonnell Douglas, *supra*; Furnco, *supra*; Sweeney, *supra*.

(3) Following this showing by the defendant, plaintiff; is given an opportunity to produce evidence tending to show that the reasons asserted by the employer, even if true in fact, were only pretexts to cover up racial discrimination.

(4) While the procedure outlined above was developed in cases brought under 42 U.S.C. Sec. 2000e-5, the same procedure applies to cases brought under 42 U.S.C. Sec. 1981 and M.C.L.A. Sec. 37.2202. Long v. Ford Motor Co., 496 F2d 500 at 505 n. 11 (6th Cir. 1974); Civil Rights Commission v. Chrysler, 80 Mich. App. 368 at 375 n. 4, 263 N.W.2d 376 (1977).

The court has already ruled that plaintiff has failed to prove the charges leveled against the defendant union; therefore, all that is presently before the court is the claim against the employer.

The specific claim of the plaintiff is that while he may not have always performed his job in a perfect fashion, he did nothing which would have led to his termination had he been white. Defendant, on the other hand, claims that plaintiff broke the company rules and that his termination was warranted for this reason. Defendant further asserts that race had nothing to do with the decision to terminate plaintiff and that any person, red, black, or white, who had been found to have acted in the manner in which plaintiff acted would have been terminated.

These positions were presented in this fashion. First, to establish its prima facie case, the plaintiff produced evidence to show that he is half American Indian and half Black, that he had been performing his job in a satisfactory manner (that is, in such a manner that he would not have been terminated had he been white), and that despite this satisfactory performance, he was terminated and replaced by a white person.

At this point, the defendant company chose to attempt to show that its decision to terminate the plaintiff was made with just cause. Since plaintiff had filed a grievance to challenge his termination and since that grievance had ultimately resulted in an "arbitrator's"¹ decision that the termination was based upon just cause, the court must determine the weight to be given to the "arbitrator's" decision.

¹ After an unsuccessful attempt to resolve the grievance at the local level, the parties went before the Michigan Joint State Cartage and Over-The-Road Arbitration Committee. See Article 44 Section 1 and Article 45 Section 1 of the Central States Area Over-The-Road Motor Freight Supplemental Agreement to the National Master Freight Agreement.

This committee consists of an equal number of union and management representatives. Art. 44 Sec. 1. After a hearing, this committee ruled that "The discharge of Jesse Becton is upheld inasmuch as it was his second flagrant disobeying of orders penalty." Later, when the grievant claimed to have discovered new evidence, an additional hearing was held after which the committee reaffirmed its (Footnote continues next page)

The question presented at this point is whether, and to what extent, the decision of an "arbitrator" that a termination decision was founded upon just cause may be used by an employer in defending a subsequent employment discrimination lawsuit.

The feasible alternatives are these. The court may find that the "arbitrator's" decision is binding upon the court insofar as it found just cause for the termination. At the other extreme, the court may find that the "arbitrator's" decision should not be considered at all by the decision maker in the subsequent lawsuit. If neither of these decisions is deemed appropriate, the court may find some middle ground such that the "arbitrator's" decision is given some weight but is not conclusive.

The starting point for the analysis of the question presented must be the Supreme Court case of Alexander v. Gardner-Denver Co., 415 U.S. 36, 94 S.Ct. 1011, 39 L.Ed2d 147 (1974). In that case, the Court held that in an employment discrimination suit under Title VII where, pursuant to a collective bargaining contract, a grievance had gone to arbitration and an arbitrator had determined that there was no racial discrimination involved in the employment decision that was being challenged, the court should make a de novo determination of the plaintiff's discrimination claim. The court adopted no standards as to the weight to be accorded an arbitral decision. It indicated that each time a court is presented with this problem, it should take into account the

¹ decision to deny the grievance.

By the terms of the contract, the decision of the committee was "final and binding on both parties" Art. 45 Sec. 1(a). While a committee made up of persons hand picked by a labor and management is not exactly the same as an independent arbitrator, the decision of such a committee, when made binding upon the parties by their collective bargaining agreement, is entitled to exactly the same deference as that given to a decision of such an independent arbitrator. General Drivers Local 89 v. Riss & Co., 372 U.S. 517, 83 S.Ct. 789, 9 L.Ed.2d 918 (1963); 29 U.S.C. Section 173 (d), (e).

It is not arbitration per se that federal policy favors, but rather final adjustment of differences by a means selected by the parties. If the parties agree that a procedure other than (Footnote continues next page)

facts and circumstances of the case before it. The court should then give the decision whatever weight it deserves, keeping in mind the degree to which the particular arbitral proceeding resembled a legal proceeding along with the fact the Congress made it the duty of the courts to make the ultimate decision in employment discrimination claims. *Id.* at 60, 94 S.Ct. at 1025.

A close reading of the opinion makes it clear that the Court was interested in (a) making certain that courts were the ultimate decision makers in Title VII employment discrimination cases and (b) taking care not to create a disincentive to disgruntled employees to seek a resolution of the ultimate issue of discrimination through contractual grievance procedures which ordinarily include arbitration.

The Court was asked to hold that an employee who chooses to put the issue of employment discrimination before an arbitrator as a part of the grievance procedure waives his right to have the decision made by the courts. The Court indicated that such a holding might lead employees to bypass grievance procedures altogether. The Court then repeated its preference for contractual grievance proceedings over judicial proceedings as a way to resolve employee-employer disputes in general and, in effect, gave to persons who claim to have been discriminated against by their employers in violation of Title VII, and whose employment contracts include some form of grievance procedures, two chances to convince a fact finder that discrimination was at least a contributing factor in the employer's decision. In other words, the court held that by processing a grievance one did not waive the right to sue under Title VII.

The case at bar presents a situation which is different from that presented in Gardner-Denver in a way that gives the court an opportunity to examine the outer limits of the

¹arbitration shall provide a conclusive resolution of their differences, federal labor policy encourages that procedure no less than arbitration. A determination made pursuant to that chosen procedure is no less enforceable in a federal court than is an arbitration award. United Mine Workers v. Barnes & Tucker Co., 561 F2d 1093 (3rd Cir. 1977).

doctrine announced in Gardner-Denver and to continue the process of developing the appropriate relationship between "arbitration" (based on private contracts) and judicial litigation (based on congressional action). Here, the "arbitrator" was not presented with and made no decision concerning the question of whether or not race was a factor in the employer's decision in this instance. All that the "arbitrator" was asked to do and did do was to examine the facts along with the provisions of the collective bargaining contract between the company and the plaintiff's union and to decide whether the action by the company was justified.

The court is not called upon in this case to abdicate its duty to make the ultimate decision as to the existence of racial discrimination; it is asked only to defer to the arbitral determination on the issue of just cause when an "arbitrator" has determined that there was just cause under the contract for the plaintiff's termination. Gardner-Denver stands for the proposition that a court may not let an "arbitrator" decide for it the issue of discrimination; neither the words of the opinion nor the reasoning behind it would justify the extension of the rule applied there to cover the situation presented here, where findings essential to the "arbitral" determination did not directly involve a finding of discrimination or no discrimination.

To rule that the court must consider the issue of just cause for termination on a de novo basis in this case would be to needlessly emasculate the arbitral process and to pass up an opportunity to conserve judicial resources.

When the parties to a dispute have, by virtue of the collective bargaining process, agreed to a contract calling for "arbitration" of grievances, the law has looked with favor at arbitration as the final arbiter. As is evidenced by the Steelworkers Trilogy, this tradition has the unabashed approval of the Supreme Court. United Steelworkers v. American Mfg. Co., 363 U.S. 564, 80 S.Ct. 1343, 4 L.Ed.2d 1403 (1960); United Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 574, 80 S.Ct. 1347, 4 L.Ed.2d 1409 (1960); United Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593, 80 S.Ct. 1358, 4 L.Ed.2d 1424 (1960). To chip away at the finality of arbitral decisions any more than is made necessary by the legislature would be to lessen the

importance of arbitration in the labor area and thus to destroy part of the carefully constructed system through which labor disputes are resolved. As the Steelworkers Trilogy pointed out, a system based upon arbitration will function smoothly only if the people involved have confidence in the decisions of the arbitrators, and this confidence will exist only to the extent that the arbitral decisions are given finality by the courts.

(6) The rule in Gardner-Denver is an exception to the general rule of finality, and, as such, it must not be extended beyond its necessary reach. The Supreme Court has determined that in order to give full effect to the laws which prohibit employment discrimination, it is necessary to make a small exception to the finality generally accorded to arbitral decisions. It refuses to accord finality to an "arbitrator's" decision on the ultimate issue of discrimination when that issue is presented to a court under Title VII. Because the reasoning behind the Gardner-Denver exception does not necessitate an expansion of that exception to cover determinations made by "arbitrators" as to facts not involving findings relative to discrimination but which were the very essence of the claims there made, there is no need to undermine the confidence that people subject to arbitration have developed in it over the years with a further erosion of that finality.

The current draft of the Restatement (Second) of Judgments (Tent. Draft No. 7, 1980) bolsters this position as well. It recognizes that there is as much reason to preclude further litigation of a particular factual issue after that issue has been determined by an "arbitrator" as there is where the prior determination has been made by a court.

Section 132 of that draft provides as follows:

(1) Except as stated in subsections (2), (3) and (4), a valid and final award by arbitration has the same effects under the rules of *res judicata*, subject to the same exceptions and qualifications, as a judgment of a court.

(2) An award by arbitration with respect to a claim does not preclude relitigation of the same or a related claim based on the same transaction if a scheme of remedies permits

assertion of the second claim notwithstanding the award regarding the first claim.

(3) A determination of an issue in arbitration does not preclude relitigation of that issue if:

(a) According preclusive effect to determination of the issue would be incompatible with a legislative policy or contractual provision that the tribunal in which the issue subsequently arises be free to make an independent determination of the issue in question, or with a purpose of the arbitration agreement that the arbitration be specially expeditious; or

(b) The procedure leading to the award lacked the elements of adjudicatory procedure prescribed in Sec. 131 (2).

(4) When the terms of reference to an arbitration limit the binding effect of the award in another adjudication or arbitration proceeding, the extent to which the award has conclusive effect is determined in accordance with that limitation.

Thus, unless the situation before the court fits into subsections (2), (3), or (4), the Restatement's position would be that the "arbitration" award should be binding upon the parties insofar as it determined that the discharge of the plaintiff was made with just cause.

The exceptions to the general rule noted above are efforts to define accurately the situations in which the doctrine of preclusion or res judicata should not be followed. Subsection (2) suggests no preclusion when the parties have chosen not to make "arbitration" awards final. In this case the parties clearly intended such awards to be final. See Central States Area Over-The Road Supplemental Agreement to the National Master Freight Agreement, Article 45, Section 1 (a). Subsection 3 (a) relates to the Gardner-Denver case and an effort to use the determination to bind the court on the issue of discrimination. Since the legislature had determined that it was for the courts to determine whether or not there had been discrimination, res judicata should not apply. As noted above, there is no such legislative directive

regarding the determination of whether or not there was just cause for a discharge. Subsection (4) is relevant only where the parties have themselves limited the future binding effect of the "arbitration" award. Here, nothing was done to change the general contractual rule of finality pointed out above

Subsection 3 (b) suggests the importance of making certain that the party opposed to the eventual ruling had a full and fair opportunity to present his evidence and arguments to the "arbitrator". This amounts to no more than elementary fairness. This elementary fairness requires:

- (a) Adequate notice . . . ;
- (b) the right to present evidence and legal argument and fair opportunity to rebut evidence and argument by opposing parties;
- (c) A formulation of issues and law ; (and)
- (d) A rule specifying a point in the proceeding when a final decision is rendered

Restatement (Second) of Judgments Section 131 (2) (Tent. Draft No. 7, 1980).

(7) The "arbitration" in this case included each of these elements. The notice was sufficient and effective. Both sides had a full opportunity to present all of the evidence and argument that they chose to present. The plaintiff was represented by an effective and appropriate union official. The issues were clear to everyone. The contract provided that the decision became final immediately. The particular dispute was not so complex that any extraordinary procedural protections were necessary and was not so urgent that any ordinary procedures were bypassed.

The drafters of the Restatement have made it clear that, in their opinion, the general rule is that prior "arbitral" awards are to be given full force in the courts. It is for the party attempting to avoid this general rule to show to the court good reason for the establishment of an exception. No exception has been established in the case at bar.

While the intentions of the parties are of utmost importance, all of the other reasons that have led our society to

prefer "Arbitration" over judicial litigation in solving labor disputes must be kept in mind here as well. "arbitration" is considered to be a superior forum for the resolution of these disputes because it can work more quickly, more informally, and more efficiently, given the limited range of disputes that are subject to it. See United Steelworkers v. Warrior & Gulf Navigation Co., *supra*. Everyone involved is harmed by the duplication of effort if the court must address and redetermine issues already decided by an "arbitrator" that do not directly involve the claim of discrimination. In addition to considering the harm that is caused to the parties, one must also consider the fact that the time spent by a court in addressing these issues in time that it is prevented from spending on all of the other cases before it. In this way, society as a whole is injured. This result must be ardently opposed.

Because the Gardner-Denver exception to the general rule of finality need not be extended to the situation before the court and for all of the reasons which support the general rule of finality, the "arbitrator's" determination that there was just cause for the termination which forms the basis of this lawsuit is binding upon the plaintiff, the defendant, and this court.

For these reasons, the court need not consider the evidence presented to it on this issue. To the extent that the defendant has been called upon to produce evidence of just cause for termination, the arbitral decision will suffice. The inquiry now turns to the question of whether the plaintiff has shown that the just cause that did exist was merely a pretext to cover up what was in reality a racially discriminatory termination. Only by such a showing can the plaintiff prevail in this action.

The court finds from the evidence produced in this case that the discharge was not a pretext to cover up racial discrimination nor was racial animus involved in the discharge.

The court finds that, although the plaintiff had filed other civil rights claims and asserted his civil rights in other contexts, the defendant did not act by way of retaliation in discharging the plaintiff.

In summary then:

1. The plaintiff belongs to a racial minority.
2. He was discharged from his job.
3. His position was filled.
4. An "arbitrator" provided by the collective bargaining contract found that there was just cause for his discharge.
5. The grievance was fairly and fully presented at the various levels on behalf of the plaintiff.
6. The decision of the "arbitrator" on this was unequivocal and will be applied by this court on this narrow issue only.
7. No pretext was involved in the discharge to cover up racial discrimination.
8. The discharge was not made to retaliate against the plaintiff for filing civil rights claims or asserting his civil rights in other contexts.

For the reasons stated above, both counts of the plaintiff's case against the defendant employer are dismissed.

Final judgment should be entered against the plaintiff and in favor of both defendants.

So ordered.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JESSE H. BECTON,

Plaintiff

v

CA #79-74785

THE DETROIT TERMINAL OF
CONSOLIDATED FREIGHTWAYS,
and LOCAL 299,

Defendants

ORDER DENYING MOTION TO AMEND JUDGMENT
AND MAKING ADDITIONAL FINDINGS OF FACT

Following a trial, this court entered judgment in favor of defendant Consolidated Freightways on June 5, 1980. This judgment was entered pursuant to a Memorandum Opinion and Order of the same date which included the court's findings of fact and conclusions of law.

On June 13, 1980, plaintiff filed a Motion to Amend Judgment and for Additional Findings of Fact. The court has read and considered that motion along with the documents appurtenant to it.

The court finds no reason to amend the judgment. The reasons for the entry of judgment were fully set out in the June 5, 1980 Memorandum Opinion and Order.

In response to the plaintiff's request for additional findings of fact, the court agrees that some augmentation is in order.

First of all, had the court not found that it was precluded from deciding whether or not the plaintiff's discharge was founded upon just cause, it would have found, based upon the evidence introduced at trial, that nondiscriminatory just

cause did exist. Therefore, even if the plaintiff's view of the law is correct in this area, the result of the case would not be changed.

Not only was the decision to discharge founded upon just cause so as to satisfy the employment contract, but it was based upon reasons appropriate under the law. The court finds that the record, which incorporates the plaintiff's employment history and the facts surrounding his failure to do the acts requested at the time of his discharge, shows that the actions of the defendant were appropriate and that the stated reason for the discharge was not used as a pretext to cover up a racially discriminatory discharge. The evidence produced by the plaintiff in an attempt to show that white drivers were not treated as severely was not directly on point and it failed to show by a preponderance of the evidence that there existed any racial discrimination in connection with plaintiff's discharge.

In addition, the evidence did not preponderate in favor of the plaintiff's claim that any of the defendants' actions were in retaliation for the fact that plaintiff had taken steps to assert his civil rights.

The additional findings of facts made in this memorandum reinforce the court's original judgment in favor of defendants. That judgment shall remain in force.

So ordered.

CHARLES W. JOINER
United States District Judge

Dated: June 27, 1980
Detroit, Michigan

Testimony of Jesse Becton

Tr. Vol. I, p. 11

BECTON

- Q When was the last day you worked at Consolidated Freightways?
- A On May 14, 1979.
- Q And what happened to you that day?
- A I was discharged.
- Q And is the discharge one of the things you're claiming to be discriminatory?
- A Yes, ma'am.

* * *

- Q (By Ms. Mirer): All right, Mr. Becton, let's concentrate on May 14th.. And what happened that day, could you please state for the record what took place, starting from the time you start out that morning, or that day; what were you doing?
- A I was dispatched from Peru, Illinois to Detroit with an intermediate stop in Jackson, Michigan.
- Q And about what time did you leave Peru, Illinois?
- A Approximately one-thirty a.m..
- Q And did you drive straight throught to Jackson and Detroit?
- A No, I didn't.
- Q What happened?
- A I had light problems on my rear box.

Tr. Vol I, p. 12

- Q What do you mean by rear box?
- A It's a trailer that I was pulling.
- Q And how many trailers were you pulling?
- A Two trailers.
- Q And did you record this, report this light problem to anyone?
- A Yes ma'am, I did. I called en route control in Chicago. Then I called Detroit, I called Detroit, Michigan and I talked to Dick Saunders.
- Q Who is Dick Saunders?
- A He's the linehaul manager.

Testimony of Jesse Becton

- Q Where?
A In Detroit.
Q Did you get repaired?
A Yes, I did.
Q How long did the repair take?
A Approximately three to four hours.
Q And then what did you do?
A Then I proceeded on to Jackson.
Q And about what time did you arrive in Jackson, Michigan?
A At 1:39 p.m..
Q That's in the afternoon?
A Right.
Q And what happened when you got to Jackson?
A I punched in.

Tr. Vol.I, p. 13

- Q What do you mean by that?
A Our pay sheet, we have to punch a clock when we enter a terminal. I signed in the sign in book what trailers I were pulling to this destination. Then I turned these bills along with my pay sheet over to the dispatcher on duty.
Q Do you know the name of the dispatcher on duty?
A Mr. Kominsky.
Q Mr. Kominsky?
A Yes.
Q What, if anything, did Mr. Kominsky do with your papers?
A He took them and he ran them in the machine that they have, it's like a teletype machine, to let them know what came in.
Q What did you do, if anything, while you waited for the machine to process your papers?
A I stood there in the driver's room and looked through the window out onto the dock.
Q Did you see anyone or anything on the dock?
A Yes, I did.
Q What did you see?
A I saw a man named Mr. William Perfett.
Q And do you know how to spell his name?
A First name and last?
Q Just last name.

Testimony of Jesse Becton

A P-e-r-f-e-t-t, I think it is.

Tr. Vol. I, p. 14

- Q And what was Mr. Perfett doing?
A He was on a forklift unloading a trailer.
Q And who is Mr. Perfett?
A He's the city driver at Jackson Terminal.
Q About what time did you notice Mr. Perfett?
A About three to four minutes after I got there.
Q What time would that have been?
A About 1:45.
Q What happened after you noticed Mr. Perfett?
A What happened?
Q Yes.
A Mr. Kominsky gave me back my pay sheet and one set of bills.
Q Did he tell — sorry, go ahead.
A He told me to drop the rear box and proceed to Detroit.
Q What did he mean by, "drop the rear box"?
A The rear trailer on the trailer that I pulled in.
Q What do you mean by, "drop it"?
A Unhook it, leave it there and then proceed.
Q Did you ask — what did you do when he asked you to do that?
A I asked him, what was Mr. Perfett going to do.
Q Why did you ask him that?
A It's been past practice and policy when over-the-road drivers went into any terminals in Michigan during the time it's open and there's a city driver or dock worker present, that the

Tr. Vol. I, p. 15

city driver and the dock worker did the dropping and hooking.

- Q How did you know this was the policy and practice?
A Well, because it had happened to me several times.
Q Had anybody else told you about the practice?
A Oh, yes. I was told by the union steward and by Mr. Saunders himself when he was union steward.
Q Had you ever had to drop and hook at the Jackson Terminal before?

Testimony of Jesse Becton

A When it was open?

Q Yes, when it was open.

A No.

Q Had you ever been at the Jackson Terminal at this time of the afternoon before?

A Yes, I have.

Q And what would happen?

A Well, do the same procedures as I did stated before, and when someone is present there, a city driver or dock worker, and he would be doing something, I'd have to sit and wait, and then he would drop.

Q What did Mr. Kominsky say when you asked him about what was Mr. Perfett going to do?

A He told me Mr. Perfett was busy.

Q What did you do then, if anything?

A Well, I called Detroit then.

Tr. Vol. I, p. 16

Q Why did you call Detroit?

A To get a clarification on this drop and hooking policy.

Q Why did you believe it necessary to get a clarification of the policy?

A Because a couple weeks prior I had came into Jackson Terminal, and during the time it was closed.

Q. Okay.

A And an accident occurred over that weekend.

Q Where did the accident occur?

A At the dock.

Q Yes.

A And I was told that I was suspected of being in this accident and to fill out an accident report, and I was threatened to be discharged if I didn't. So, rather than to be discharged and lose my job, I made a statement I would not make an accident report because I had no knowledge of any such accident. So, I had to be clear from Detroit what was coming down.

Q So, did you call Detroit to get a clarification of the policy because of an accident that had happened to you previously?

A Yes, ma'am.

Q Was there any other reason why you called Detroit to get

Testimony of Jesse Becton

a clarification?

A Well, because there is a possibility that if the city driver

Tr. Vol. I, p. 17

could have filed a grievance against me for doing this work.

* * *

Q (By Ms. Mirer): In any event, you called Detroit. Did you get through to anyone?

A Yes, ma'am, I did.

Q Who did you speak to?

A Rob Christian.

Q Who is Rob Christian?

A He was the dispatcher on duty in Detroit.

Tr. Vol. I, p. 18

* * *

Q (By Ms. Mirer): Do you have personal knowledge whether Mr. Christian knew about the policy?

A Yes, ma'am.

Q And how did you know that?

A Because we have talked about it.

* * *

Q (By Ms. Mirer): What did you say to Mr. Christian when you called?

A I told him that Mr. Kominsky has asked me to drop and hook and drop my rear trailer and proceed to Detroit, and I told Mr. Christian that there was a city driver present and I was looking at him.

Q Did you ask him to explain the policy?

A Oh, yes, definitely, to explain the policy and to clarify it for Mr. Kominsky and myself.

Q And what happened then?

A Then I asked Mr. Kominsky to get on the line with us.

Testimony of Jesse BectonTr. Vol. I, p. 19

Q And did he do that?

A Yes, ma'am, he did.

Q And what did you say then?

A I explained to him, I said, "Rob, Mr. Kominsky has asked me to drop my rear trailer. Would you please explain to us the drop and hook policy when the terminal is open and someone is present?"

Q Did you tell him someone was present?

A Yes, I did.

Q What did Rob Christian say?

A He said, "Mr. Kominsky, was there anybody present?"

Q What did Mr. Kominsky say?

A He said, "No."

Q What did you say?

A I said, "Rob, I'm looking right at him."

Q And then what happened?

* * *

Tr. Vol. 1, p. 20

A Rob told him to get a witness and tell him to do it, and if he doesn't, suspend him.

Q (By Ms. Mirer): Do what, tell you to do what?

A Drop that trailer.

Q What did Mr. Kominsky do then?

A He then went out onto the dock and got Mr. Perfett.

Q And about what time was this?

A It was about five to ten minutes to two.

Q And then what happened?

A Then he brought Mr. Perfett into the driver's room where I was.

Q And then what happened?

Tr. Vol. I, p. 21

A And then I asked him again, what was Mr. Perfett going to do.

Q I'm sorry. Did Mr. Kominsky ask you to do anything?

A Yes.

Testimony of Jesse Becton

- Q What did he ask you to do?
A He asked me to drop and hook.
Q And what did you ask, what did you say?
A I asked him, "Are you telling me to violate the policy and to go ahead and drop and hook and have this man file a grievance against me?"
Q Why did you ask him about this? Why did you ask him about whether he was violating the policy?
A Because I definitely didn't want to get in any trouble. I didn't want to lose my job.
Q What did Mr. Kominsky say then or do then?
A Then he repeated that he wanted me to drop and hook.
Q Did he say anything else?
A Then he said something to the nature that Mr. Perfett didn't know how to do it.
Q What did you say?
A I told him, I says, "Well, to prevent a grievance filed against me, getting me in trouble, possibly losing my job I would go out with Mr. Perfett and drop and hook."
Q What did Mr. Kominsky say?
A He says, "No, you're suspended."

Tr. Vol. I, p. 22

- Q Did you ever refuse to drop your rear trailer?
A No, ma'am, I didn't.
Q What would you have done if no city driver were around?
A I would have went out and dropped it with no question and left.

Tr. Vol. I, p. 35

- Q (By Ms. Mirer): Mr. Becton, when you were terminated on May 14th., was there any rule that you were told you violated?
A Yes, ma'am, it was.
Q And what was that?
A It was under conduct 3(g).
Q And what is 3(g)?
A Flagrant disobeying of orders.
Q Had the company charged you with violations of this rule before?

Testimony of Jesse BectonTr. Vol. I, p 36

- A Yes, they had.
Q How many times?
A Twice before.

* * *

- Q (By Ms. Mirer): Okay. Mr. Becton, let's explore your prior history of 3(g) violations. When did you first get your first 3(g) violation?
A August 28, 1978.
Q What was that for?
A I was en route to Aurora, Illinois, and I had a breaddown in Battle Creek.
Q What did you do?
A I pulled in for repairs and called en route control in Chicago and reported it.
Q Did you receive any instructions?

Tr. Vol. I, p. 37

- A En route control instructed me to call some vendors, they gave me some numbers for vendors.
Q What is a vendor?
A It's the people that do the repair on the road.
Q Did you call Detroit?
A Yes, I called Detroit.
Q Who did you speak to?
A Bob Glissdon, or something like that.
Q Did Mr. Glissdon tell you to do anything?
A Yes, he did.
Q What did he tell you?
A He told me to go to bed, to go to a hotel.
Q Did you go to the hotel?
A No.
Q Why not?
A Because I had contacted the vendor. The vendor told me he would be there within the hour, plus I had a prior embarrassing situation at this same hotel.
Q What was the embarrassing situation?
A I'd gone there in January, in the winter of that year and

Testimony of Jesse Becton

tried to get a room there, and they told me that they would not accept a purchase order number, and that C. F. didn't have an account there.

Q Could you stay there?

Tr. Vol. I, p. 38

A Could I stay there?

Q Yes.

A I didn't have any money.

* * *

Tr. Vol. I, p. 39

* * *

Q (By Ms. Mirer): In any event, did you believe — what did you believe about whether or not you had been ordered to stay in the motel?

Tr. Vol. I, p. 40

A No, I didn't believe that I was ordered, no.

Q What did you believe?

A I believe that —

* * *

Q (By Ms. Mirer): What did you believe?

A I believe he was giving me information of where I could stay being in that area.

Q And did you ever call Mr. Glissdon back?

A Yes, I did.

Q And what did you tell him?

A I explained to him the problem that I'd had prior, and plus the fact that the vendor had stated they would be there within the hour.

Q Did the vendor arrive within the hour?

A No, they didn't.

Q When did they arrive?

A They arrived sometime after daybreak.

Testimony of Jesse Becton

Q Where did you wind up sleeping?

A I ended up sleeping in the truck, waiting for the vendor.

Q Where would you have rather slept?

Tr. Vol. I, p. 41

A I'd have rather slept in the hotel.

Q Were you reachable in your truck?

A Yes, ma'am, I was.

Q Can you think of any reason why the company would care whether you slept in the truck or the motel?

* * *

A No, ma'am.

Q Now, subsequently, did you go back to Detroit?

A When?

Q After you got fixed and after you went to Aurora?

A I was going to Aurora. I went on to Aurora, because I had a light problem, and after daybreak I didn't have that problem anymore.

Q Subsequently you returned to Detroit?

A Right.

Tr. Vol. I, p. 42

Q And were you asked whether you slept in the motel?

A Yes.

Q And what did you say?

A I explained to them about the vendor, and plus about the experience I had had prior and what the hotel management had told me, that C.F. didn't have an account with them.

Q What happened then?

A Well, actually, nothing. I thought that it was clarified and it was all forgotten.

Q And then what happened?

A Then I get this letter, 3(g).

Q What did the letter say?

A It said that I was flagrantly disobedient to an order.

Q Do you believe you flagrantly disobeyed an order?

A No, ma'am.

Testimony of Jesse Becton

Q Why not?

A Because I saved the company money by not staying in the hotel, plus the charge was petty for the punishment that I received.

Q Were you later charged with any other violations of rule 3(g)?

A Yes, ma'am, I was.

Q When was that?

A That was in January, 1979.

Tr. Vol. I, p. 43

Q Could you tell us a little bit about it?

A Well, I was en route from Detroit to Akron, and the trucks, I have to explain about the trucks to clarify this.

Q Just tell me, did you have a breakdown?

A Yes, I did.

Q And what did you do?

A I called Chicago and I called Detroit.

Q And what did you tell them?

A I told them where I was, what the problem of the vehicle was.

Q Did you give them the phone number of where you were?

A Yes.

Q Did you receive any instructions?

A I was told to call back within an hour.

Q Who told you to call back?

A Mr. Williams.

Q Who is he?

A He's the dispatcher that was on duty that night in Detroit.

Q And did you call him back?

A No, I didn't.

Q What happened?

A Well, I lost track of time.

Q And how long did you wait after the hour to call him?

A It was about two and half hours late calling.

Tr. Vol. I, p. 44

Q And what happened when you called Detroit?

A Mr. Williams asked me what had happened.

Testimony of Jesse Becton

- Q What did you say?
A I said I lost track of time.
Q Did Mr. Williams sound angry?
A No, he didn't.

* * *

- Q (By Ms. Mirer): What happened after you talked to Detroit?
A You mean after I talked to Mr. Williams?
Q That's right.
A Well, later on the truck was fixed and I went onto Akron.
Q What happened, if anything, when you got to Akron?
A When I got to Akron the dispatcher told me that Dick Saunders says, "call him".
Q And who is Dick Saunders, again?

Tr. Vol. I, p. 45

- A He's the linehaul dispatcher manager.
Q Did you call Dick Saunders?
A Yes, ma'am, I did.
Q What were you told?
A I was told I was discharged.
Q Did he say why?
A Because nobody knew where I was.
Q What did you say? What did you tell Mr. Saunders?
A I told him that I called Chicago. I also called Mr. Williams in Detroit and given him all this information. I couldn't understand why he didn't know where I was.
Q Did you subsequently get a letter of discharge?
A Yes, ma'am.
Q And what were you discharged with?
A 3(g).

* * *

- Q (By Ms. Mirer): Do you believe you flagrantly disobeyed an order?
A No, ma'am.
Q Why not?
A Because I followed the breakdown procedures to the T. I also

Testimony of Jesse BectonTr. Vol. I, p. 46

talked, explained the situation. Everybody knew where I was, and I can't understand it.

Q Now, look at the uniform rules and regulations, Mr. Becton. Is there a file date — is there any rule, current rule concerning being late in calling?

A Yes, ma'am.

* * *

A That comes under 4(c).

Q (By Ms. Mirer): And what is a 4(c) called?

A It's failure to report to dispatcher at specified times when required to do so while on duty.

Q What's the penalty for that first offense of the 4(c)?

A Reprimand to three day lay off. But first offense is reprimand.

Q Okay. Why do you think you were given a 3(g) and not a 4(c)?

A Because of retaliation from the company and their racial —

Q Say it.

A — discrimination, yes.

Q Why do you say it was racial discrimination?

A Because I know of white drivers that have had breakdowns and didn't call at all.

Tr. Vol. I, p. 51

* * *

Q Is there any other reason why you believe these disciplines were racially discriminatory?

A Well, because of some events that occurred prior to these things taking place.

Q And what were those events?

A I began to show my heritage by wearing Indian jewelry.

Q And what happened?

A Mr. Christian made a racial slur about this and I filed charges, Civil Rights charges against him for it.

Q Now, what did Mr. Christian say to you?

Testimony of Jesse Becton

- A Well, he said to me, "That is a heck of a lot of difference in the cowboy I hired and the Indian that's sitting before me now."

Tr. Vol. III, p. 10

* * *

- Q (By Mr. Damm): Mr. Becton, did you ever personally witness a white driver refusing an order to drop and/or hook?
- A Yes.
- Q Where?
- A At Jackson.
- Q And who was it?
- A The guy that gave me my first run, Banning.
- Q And when was it?
- A I couldn't exactly tell you when.
- Q Do you know what time it was?
- A It was during the day.
- Q What time during the day?

Tr. Vol. III, p. 11

- A I don't know exactly when it was during the day.
- Q Was it in the morning or afternoon?
- A Sir, I just told you I couldn't tell you the exact time, but it was during the daylight hours and they were open.
- Q Was a city driver present?
- A I don't know if it was or not.
- Q Do you know who gave the instruction?
- A Nope. I can give you the description of the individual. He's still at Jackson.

Testimony of James WallaceTr. Vol. III, p. 17**JAMES WALLACE**

was thereupon called as a witness herein, and after having being first duly sworn to tell the truth, the whole truth and nothing but the truth was examined and testified as follows:

Testimony of James Wallace

DIRECT-EXAMINATION BY MS. GMEINER:

- Q State your name and address for the record, Mr. Wallace?
- A My name is James Wallace. I live at 19726 Sussex, Detroit.
- Q And what is your age, Mr. Wallace?
- A Forty-seven.
- Q And just for the record, could you state your race?

Tr. Vol. III, p. 18

- A Black.
- Q How long have you worked at Consolidated Freightways?
- A Approximately eight years.
- Q And that's been as an over-the-road driver?
- A Yes.
- Q During all that time?
- A Yes.
- Q What terminal did you start at?
- A Well, I started at Toledo, Ohio.
- Q And out of which terminal do you work now?
- A Detroit facility.
- Q In the course of your employment by Consolidated Freightways, which terminals have you had occasion to deliver freight to or pick freight up from?
- A Well, I deliver in a total division, which is division seventeen. That's satellite terminals such as Flint, Jackson, Lansing, Toledo, Saginaw, Pontiac, Battle Creek, Kalamazoo.
- Q In the trucking industry do you know what the expression, "drop and hook", means?
- A Yes, I do.
- Q Who is supposed to drop and hook the trailers for the over-the-road drivers?
- A Well, since I've been at the establishment in the industry,

Tr. Vol. III, p. 19

- it's been the city and dock workers job.
- Q Is this an established policy at Consolidated Freightways?

Testimony of James Wallace

A As long as I've been there, this has been enforced at other locals.

* * *

Q (By Ms. Gmeiner): Is it a practice at Consolidated Freightways for the road drivers to have the city drivers drop their trailers as you've described?

A Yes.

Q Is there any occasion when the over-the-road drivers drop and hook their own trailers?

A Yes, it is, after hours, working hours for the dock and city workers and on weekends.

Q And how do you have knowledge about this practice?

A I've dropped and hooked on these occasions, weekends, holidays, and the days that they're off, and the office is closed, and they can be open, and if there's not anyone present to do the

Tr. Vol. III, p. 20

drop and hooking, that's in the city, then we drop and hook.

Q And how do you have knowledge about the practice when city drivers are there that they do the work, the drop and hooking?

A I've had occasion to be present at those facilities and have refused to do so when there were people there and I've seen other drivers refuse.

Q Have you ever been instructed that this is the practice at C.F.?

A Yes, I have been instructed by union stewards as well as the BA at times.

Q Can you recall any particular union stewards who so instructed you?

A Yes, when I first moved here. Well, for instance, in Toledo I had a union steward, Chuck Bank. After I moved to Detroit it was Dick Saunders, Bob Russell and Parker.

Q And they all instructed you that dropping and hooking, this is the job of the city drivers when they're present?

A Yes.

Testimony of James Wallace

Q Do you know why this policy or practice exists, Mr. Wallace?

A Well, to my knowledge, I've experienced where that a grievance has been filed against drivers when there's a city driver laid off and there's a lot of work coming into these facilities, and these people has filed, and one grievance, and I can —

Tr. Vol. III, p.21

* * *

Tr. Vol. III, p. 22

* * *

Tr. Vol. III, p. 23

Q (By Ms. Gmeiner): Have you been told what the reason is for this policy?

* * *

A Yes, I have been told. I've been told by Dick Saunders, the union steward, and he enforced it.

* * *

Q (By Ms. Gmeiner): Go ahead, Mr. Wallace.

A I have been instructed several times by the union stewards to what I was supposed to do, and what I weren't supposed to do, and that was a policy that I weren't supposed to drop and hook when there was people available.

Q Did they tell you why?

A Because when you go out of one local area into another local, that becomes another locals job, and you go into that local,

Tr. Vol. III, p. 24

other than 299, that belongs to a different local or

Testimony of James Wallace

different position, and these people has that right to do that work.

Q And do you know of any instances where city drivers have filed grievances and asserted this right?

A Yes, I do.

Q And where is that?

A That's in Toledo. There's a city driver laid off, and he filed a grievance, and another guy I know filed one and he won.

Q Have you ever dropped and hooked your own trailer?

A Ask —

Q Have you ever dropped and hooked your own trailer?

A Yes, I have.

Q And on what occasion was that, or what occasions?

A Many occasions when no one was in the area present to do the work on the weekends when they were closed, and at night.

Q Have you ever seen an over-the-road driver refuse to drop and hook his trailer?

A Yes, I have, on two occasions.

Q And can you tell me about those occasions?

A Yes. The one time I remember Dick Saunders refused in Kalamazoo, and they didn't force him to drop. They then had the city people do the work.

Q And was Mr. Saunders disciplined?

Tr. Vol. III, p. 25

A No.

Q What is Mr. Saunders race?

A White.

* * *

Q (By Ms. Gmeiner): Did you observe any discipline being administered to Mr. Saunders?

A No.

Q And Mr. Wallace, what is Mr. Saunders race?

A He's white.

* * *

Testimony of James Wallace

talked about one. Could you tell me about the other occasion, Mr. Wallace?

A Irv Petty, we went to Kalamazoo together. He happened to

Tr. Vol. III, p. 26

be in the front of me, and he punched in in front of me and they asked him to drop and hook, and there was two city men working on the dock at this time, and Irv Petty refused to do it, so they went and got the guys off the dock and dropped and hooked him.

Q And was Mr. Petty disciplined?

A No, not to my knowledge.

Q What is Mr. Petty's race, Mr. Wallace?

A He's white.

Q Have you ever seen or known of any road drivers to be disciplined for refusal to drop and hook their trailers other than Jesse Becton, the Plaintiff in this case?

A No.

Q Mr. Wallace, I want to ask you a few questions about your experience as a black over-the-road driver for Consolidated Freightways. Do you have any experience of being treated differently on the basis of your race from white drivers?

* * *

A Yes, I have.

* * *

Tr. Vol. III, p. 27

Q (By Ms. Gmeiner): Could you tell me about any one or a couple incidents that you base this conclusion on?

A Well, for instance, I tried for a period of a couple of three years to get into the Detroit Terminal facilities to get a job, and finally I get the job in Toledo, Ohio and I had worked there —

Q Was this for C.F.?

A Yes, it was.

Testimony of James Wallace

- A I worked for a period of time and was laid off. And after I got laid off there was a change of operations that took place in Toledo. And during this time I had been laid off, eleven months or more, and when the change of operations went into effect they had a policy at certain terminals, not all —

* * *

- Q (By Ms. Gmeiner): Well, I'll rephrase that. Was there a company practice that you observed at that time?
- A Yes. While I was told that I could be in the change if I accepted by Mr. McDorman, they stated that I had a good position to be in the change of operations on the lay off

Tr. Vol. III, p. 28

status, because if I hadn't gotten into the change I would have been out of position to come to work because I couldn't bump on the dock there in Toledo, or I couldn't get into the city. So, therefore, I would have been left out in left field, and so he told me, he said, "Well, when we sent you a registered letter with a ballot to vote on the bids is put into effect on the July the 20th., we'll send you another letter to tell you to be at the terminal. Then you can bid it. And at that point you can bid if after all of the active people bid, and that had seniority, and then if there was any position open at this particular time you can have that position, you can bid." At that point, because I was the only person laid off in division seventeen at this time, so, I would have had first option to bid. Then when my turn, everybody has been placed, there was three positions in Detroit where I lived and wanted to go. I picked up the phone to bid. They said, "We will not let you bid." And I said, "Why?" And they just said, "Well, we'll get back to you in two or three weeks." And this is the result of it. I didn't get the bid, and at that point some guys out of another state that had less seniority than I did that was on lay off status, as I was called, and they got a bid and filled that position. And afterwards I filed a grievance, and at that point I said, "Well, it's nothing for me to do."

Testimony of James WallaceTr. Vol. III, p. 29

I waited three weeks, then I called the Federal Government in Washington, the EEOC, and stated that this fact had took place, and they then forced them to put me to work. And at that point I was put — they had transferred my seniority from division seventeen to division twenty-four in Akron, Ohio. There was eighty-one people laid off in Akron, Ohio that had no rights to the change of operation, and at that point they would have allowed eighty people to bid and keep me on the lay off status at my own terminal. That's when I called the government and they put me in position then to work. But at that point they had put three people to work that had less seniority than I, and they still are over me on the board.

Q And those three people they put to work, were they white or were they black?

A One was black, came from St. Louis and the other is white.

Q What was the name of the black gentlemen who came from St. Louis?

A Jesse Kelly.

Q About how many black over-the-road drivers were there in this division at that time, if you know?

A Well, there's approximately about six hundred to a thousand people working in this division and there was then three black drivers.

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* * *

Q Was there any other treatment by Consolidated Freightways that you consider to be unfair to you on the basis of your race?

A Well, I know one incident I'd like to bring up is when, on the way from Akron last year I had occasion to have an accident. While I was not at fault I hit a car, but no damage was done to either the equipment, enough that the person that I hit stated that I weren't at fault. And he signed an exoneration card for me that I had in my possession. I went to the State Trooper and filed a

Testimony of James Wallace

responsible for the accident. I came to Detroit facility, reported it to Richard Saunders, explained it that I had been exonerated, gave him a copy of the exoneration slip and the following

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week I received a letter of discipline and a charge for it. And the reason why I said the difference in treatment, I talked — I mean another driver, Rex Phelps, I know this to be a fact, told me he got upset when he said -

* * *

Q (By Ms. Gmeiner): Are there any other incidents that have happened to you, Mr. Wallace, that you consider unequal treatment?

A Yes, on the occasion last year, I have a son that was having a problem. He had got arrested and was locked up, and I was at home on the board, which you have a whole board to go on run. I called Detroit. I had a letter, I received a letter to be in court, and I called the terminal and talked to the dispatcher about going to court. And at that point I talked to the dispatcher, and she wouldn't let me

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drop, so she referred me to Mr. Jerry Datters, and he referred my call to Dick Saunders, which was in Rochester, Michigan at a local at a hearing, a union hearing. And Dick Saunders called me in, asked me what the problem was. I told him I had a son that was arrested and that I had to go to tend to this affair, and finally after a long discussion he gave me twenty-four hours off. After that I went and we took care of this business, but this court date had been postponed to two weeks after that on the date I went up there, but I talked to the people that was witnesses, and filing the charges. Meantime that was a day of election, I went to the polls and we voted, my wife and I went back home. And the following afternoon we decided to go bowling, because I

Testimony of James Wallace

at the point I was bowling in the second game and I got a phone call and I went to the phone and answered the phone, and it was C.F. calling me to work. They didn't really call me to work, they called me—and it was a city dispatcher by the name of Mike, he called and I said, "What do you want?" He said, "Well, you're on the board, you're number one." I said, "Well, I was dropped off the board for twenty-four hours." He said, "Well, what have you got?" "I got an Aurora." He said, "Go ahead and finish bowling, then call me."

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At that point I started to really try to get frustrated, and who would know I was at the bowling alley. I didn't report anything I was going bowling or anything. So then, I went back and finished bowling and I went out to my car after that and Monforte's card was sticking in my — he's the terminal manager at Detroit Terminal, was sticking in my car window. That's when I knew they were following me after off duty.

Q Would they have had any way, C. F. have had any way of knowing you were at the bowling alley?

A Not unless they followed me.

Q Prior to this time, Mr. Wallace, how long had you been working since your last day off?

A Well, I sent a copy of my backlogs and my recaps. I had worked a total of two hundred and ninety days without asking for a day off, and I sent this to Mr. Burbank in Menlo Park, every copy of my backlog.

Q Did you receive disciplinary action?

A Yes, I did. I received a letter stating that I had lied about business to attend to.

Q Mr. Wallace, have you ever filed Civil Rights charges with any government agency?

A Yes, I have.

Q And do you recall —

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A On several occasions.

Q What agencies are those?

Testimony of James Wallace

Q And have those charges been against C.F.?

A Yes, they have.

Q What has been the result of those charges?

A Total harassment, unfriendliness among the road drivers, the white road drivers. They have a tendency to go the other way on the premises and —

* * *

Q (By Ms. Gmeiner): What happened after the charges were filed?

* * *

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A Well, there were several things happened. Just a further harassment, disciplinary things when it weren't so, because I have had letters that they have sent to my place that I was refused to work, and that I had been on duty working hours. And then I had several white drivers come to me after we leave the facilities of Detroit, and get to Aurora and tell me that Dick Saunders told them to stay away from that nigger because he's a troublemaker, he has filed Civil Rights charges. I asked the, I say, "Why are you complaining about it." He said, "He told me —

* * *

Q (By Ms. Gmeiner): What did you do when you saw these drivers being unfriendly to you, Mr. Wallace?

A I wondered why.

Q And did you do anything about that, about wondering why?

Tr. Vol. III, p. 36

A Well, I asked them why were they being unfriendly to me, because I try to be courteous and decent with everybody.

Q What was the result of your inquiry?

A This is what they told me.

Testimony of James Wallace

- A They told me that he had, Dick Saunders had instructed them not to socialize with me because I was a trouble-maker, and if they had they wouldn't be getting these letters of discipline, if it weren't for us black bastards.

* * *

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* * *

- Q (By Ms. Gmeiner): Have you had any other experiences at Consolidated Freightways of harassment, Mr. Wallace?
- A Well, other than getting unnecessary discipline as of the result of letters that I didn't receive and different — well, phone calls, and when I call in, like I got, for instance, today I was in preparation on the 24th. for this trial. I was at an attorney's office and —

* * *

- A On the 24th. of this month I had occasion, we've been laying and not working, my checks had dropped considerably. They have filled the board up to where we can't work. We lay thirty to forty hours a day.

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- Q Who is we?
- A Black drivers as well as on the extra board. We lay like thirty, forty hours a day.
- THE COURT: I don't understand that statement, "All of us black drivers and those on the extra board", what's that mean?
- THE WITNESS: We're laying, we're not working every day.
- THE COURT: Black drivers are kept on a separate board?
- THE WITNESS: We're all on the same board, most of us black guys, except one man is on the extra board, and work has been —

Testimony of James Wallace

- A Extra board is people that recall — we have a wheel-board, and the other people are on bid runs, they have specified runs on specified days, and then they have specified days off. We come in and we're on the board seven days a week.

THE COURT: Are these people who have lower seniority?

- A No, some of them have high seniority, and high up on the board. They can bid if they want to.

THE COURT: But they don't?

THE WITNESS: No, on occasion, while I have

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bidded and I have seniority to bid, but I got harassed, as I bid. I bid at the particular time that I bid it, if at that point the bid has been running, frequently every trip and early sometimes, but when I bid it I only got one trip per week, or at the most two trips on that whole bid. I got off the bid because I felt I was being harassed on the bid, and two occasions I bid, then I just totally dropped off of the bid board, and went on the extra board. And now they filled the board where we can't get proper work to where actually we're getting punished, we're not getting a third of the work that we should because we lay at the house like forty hours, and then if we go out of the house to go someplace to take care of some business, which on the 24th. I was at my attorney's office there making a Deposition, and I got called. My wife said, "They just called you from work." So, I called immediately and I had my attorney to call and she told me I was on call. I said, "well, I have an appointment and I'm going to drop." I received a letter as of today of discipline of being unavailable when they had several people that could go to work and do that work.

- Q (By Ms. Gmeiner): Do you know whether Consolidated Freightways is planning to move its operation out of Detroit?

- A Yes, I do. It's been an official statement they're doing

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Testimony of James Wallace

Q And do you know where that move is supposed to be to?

A Fremont, Ohio.

Q I'm sorry, Mr. Wallace —

A Indiana.

Q Fremont, Indiana. Do you know, if you know, have any drivers begun to move to Indiana?

A Yes.

* * *

A Yes, there are some people that have bought property there already and they're paying for that property, and they are also paying to live here.

Q (By Ms. Gmeiner): Mr. Wallace, have any new drivers — excuse me. Any new over-the-road drivers started to work for Consolidated Freightways since May 14, 1979, when Jesse Becton was fired?

A Yes, they have.

Q What is their race?

A They're all white.

Q Any black drives been hired, to your knowledge —

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A No.

Q — as over-the-road drivers since that day?

A No.

MS. GMEINER: I have no further questions.

THE COURT: Proceed.

CROSS-EXAMINATIN BY MR. CWIEK:

Q Thank you, Your Honor. Mr. Wallace, my name is Ted Cwiek. I'm an attorney for Teamsers Local 299. I will be asking you some questions. If you don't understand my questions or if you'd like me to rephrase it, indicate that and I'll try to put the question to you in a form that you understand.

Mr. Wallace, how long have you been employed with Consolidated Freightways?

A Approximately eight years.

* * *

Testimony of James Wallace

with Consolidated Freightways, were you employed in the trucking industry?

A Not immediately prior. I was operating a heavy equipment trencher at the time, but I had operated heavy equipment. I owned my own truck for thirteen years.

Q And in the eight years that you've been employed with

Tr. Vol. III, p. 42

Consolidated Freightways, have you been a member of the Teamsters Union?

A Yes, I have.

Q And I believe you've testified that part of the period you worked in Toledo, Ohio; is that correct?

A Yes.

Q What local union were you a member of when you worked in Toledo, Ohio?

A Local 20.

Q And subsequently you moved to Detroit pursuant to a change of operations; is that correct?

A I was living here at the time, but I had to work in Toledo because I couldn't get a job here.

Q And at some point you became employed with Consolidated here in Detroit; is that correct?

A Yes, I did.

Q When did that happen?

A 1975, September the seventeenth.

Q Now, when you mentioned the drop and hook practice that you had experienced at Consolidated Freightways, have you ever had occasion to see that practice reduced to writing?

A Yes.

Q And in what way?

A I have a copy in my pocket of the writing. You want to see

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* * *

Tr. Vol. III, p. 52

* * *

Testimony of James WallaceTr. Vol. III, p. 62

REDIRECT-EXAMINATION BY MS. GMEINER:

Q Mr. Wallace, you had a letter before you showed to Mr. Cwiek. Do you still have that letter in your pocket?

A Yes, I have.

Q Could we see that again?

A Yes.

Q I'd like to have this letter marked as an Exhibit. This will be Plaintiff's Number Four, I believe.

* * *

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* * *

Q (By Ms. Gmeiner): Mr. Wallace, you were asked some questions about this paper before by Mr. Cwiek. What is it that makes you think this is evidence of a company practice in division seventeen?

* * *

Q (By Ms. Gmeiner): Referring to the Exhibit that's been marked for identification purposes as Number Four, the

Tr. Vol. III, p. 64

letter, Mr. Wallace, that you had just had in your pocket; you testified before that you believed that that letter was evidence of a company practice in division seventeen, in this whole area.

* * *

A I think it's a fact because on that particular day that I

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was there I refused to drop and hook, and he sent a man

Testimony of James Wallace

man to do it.

* * *

Q (By Ms. Gmeiner): Let me ask you just one other question. I think we can clarify. Do you know if the Saginaw Terminal is in division seventeen?

A Yes, it is.

THE COURT: What is division seventeen of C.F.?

Q (By Ms. Gmeiner): Of Consolidated Freightways. Could you state, please, what, to your knowledge, what division seventeen is?

A We have a division made up of several different satellite terminals, and locations in Michigan, and all those terminals we go to drop and hook and bring freight to Detroit breakpoint, and that's one of them, Saginaw, and we have to go into that local, and this local had the right to their work there.

* * *

Q Strike the question. Are both the Jackson Terminal and the

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Saginaw Terminal in the vicinity to which you work, Mr. Wallace?

A Yes, it is, yes.

Q And is that vicinity, division seventeen of Consolidated Freightways?

A Yes, it is.

* * *

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* * *

VOIR DIRE-EXAMINATION BY MS. GMEINER:

Q If you could, Mr. Wallace, take the letter that's already

Testimony of James Wallace

been marked as Plaintiff's Exhibit Four. How did you get a hold of this letter?

A The union steward, I asked the union steward to get it in Saginaw, and he got it for me.

Q And why did you ask him to get the letter for you?

A Because he was present at the time that I refused to drop and hook in Detroit, and I had made a call to Detroit and told

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him that I had refused to drop and hook, and then he in turn came back and called his local, and they sent him this letter and he posted it and gave me a copy.

Q And has this letter had any meaning to you since the time that you received it? Has it been of any use to you?

A No more than I haven't had to drop and hook again.

Q Have you ever shown it to anyone since that time?

A Some other drivers.

Q And you said it was posted?

A Yes, it was.

Q And where?

A In Saginaw Terminal.

MS. GMEINER: Your Honor, I do think that the letter has been shown to be relevant to the understanding that the drivers have of the policy, and for that reason I'd like to move it into evidence.

* * *

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* * *

THE COURT: Well, it's pretty moot, I'll say that, in every respect. It's not a business record of any kind. It does purport certain facts, at most. It can come in to show what is indicated, and I'll leave it coming in for that specific purpose, for such value as it will have.

MS. GMEINER: It will be Plaintiff's Exhibit Four.

* * *

Testimony of James WallaceTr. Vol. III, p. 70

* * *

Testimony of Jesse KellyTr. Vol. III, p. 71

JESSE KELLY,

was thereupon called as a witness herein, and after having been first duly sworn to tell the truth, the whole truth and nothing but the truth was examined and testified as follows:

DIRECT-EXAMINATION BY MS. GMEINER:

- Q For the record, state your name and address, please?
 A My name is Jesse Kelly. I live at 8104 Terry, Detroit.
 Q And for the record, would you state your race, Mr. Kelly?
 A Black.
 Q How old are you?
 A Thirty-two.
 Q How long have you been employed by Consolidated Freight?
 A About six and a half years.
 Q At what terminal, what C.F. Terminal are you based?
 A Detroit-Romulus.
 Q And how long have you been based there?
 A About five years.
 Q And where were you before that?
 A St. Louis, Missouri.
 Q Are you familiar with an expression in the trucking industry called, "dropping and hooking"?
 A Yes, I am.
 Q Whose job is it to drop and hook the trailers of the over-

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the-road drivers?

- A At night when the terminal is closed it's the job of the road driver, and during the day when there's no one else there it's also the road drivers, but if they have a dock man, city man, it's their job.

Testimony of Jesse Kelly

- Q Is that an established practice in the Consolidated Freightways, to your knowledge?
- A As far as I know.
- Q Have you ever observed an over-the-road driver refuse to drop his trailer or drop and hook his trailer?
- A Yes, I have.
- Q Could you tell me about that?
- A Yes. It happened twice with Irv Petty, once in Jackson and once in Flint. In Flint he refused to drop and hook because he said he was having problems with his back and he argued with the terminal manager there for a few minutes, and I was there at the same time, and he told me to go and drop and hook mine. When I finished Irv was still there waiting on somebody to drop and hook.
- Q Were there any city drivers there when Mr. Petty refused to drop and hook his trailer?
- A Not on that day.

* * *

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- Q (By Ms. Gmeiner): Mr. Kelly, you mentioned one driver, Irv Petty, that refused to drop and hook. Was there another driver?
- A Yes, there was, Bob Glisson, he refused to drop and hook in Jackson because they had two men on the dock.
- Q And was Mr. Glisson disciplined?
- A No, he wasn't.
- THE COURT: What's his name?
- A Bob Glisson.
- THE COURT: And he refused to drop and hook?
- THE WITNESS: Yes, sir.
- Q (By Ms. Gmeiner): And what was Mr. Glisson's race?
- A He was white.
- Q And to backtrack a little, what was Mr. Petty's race?
- A He's white also.
- Q And was Mr. Petty disciplined, to your knowledge?
- A No, he wasn't.
- THE COURT: Where was that done?
- THE WITNESS: In Flint.
- Q (By Ms. Gmeiner): What terminal did Mr. Glisson refuse to drop and hook in?

Testimony of Jesse Kelly

A The Jackson Terminal.

Q Do you know who ordered Mr. Glisson to drop and hook?

A Yes, the dispatcher in Jackson. He's here, but I can't

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quite recal his name. Kominsky.

Q But he's herein the courtroom now?

A Yes, he is.

Q Can you point him out, who he is?

A Yes, the gentlemen in the gray suit.

Q Would that be Mr. Kominsky?

A Kominsky, yes.

Q Mr. Kelly, have you ever filed a Civil Rights charge against Consolidated Freightways?

A Yes, I have.

Q And can you recall when you filed your first charge?

A It was in June of '78.

Q Why did you file that charge?

A Because I felt like I was being discriminated against. In November of '77 I had an accident while unloading a pup at Campbell Soup Factory in Napoleon, Ohio. I was ordered to do this by the supervisor, Mr. Jerry Datters. and Nick, the assistant terminal manager. I don't remember his last name, and Rob Christian, the operation manager at this time. And I proceeded to unload the trailer, and I was lifting a bag and I guess I lifted the wrong way and my back started hurting. I called and told them I had hurt myself, and Mr. Datters got on the phone, he told me I wasn't hurt that bad, to unload the truck, because you're not hurt that bad. I

Tr. Vol. III, p. 75

told him I was hurt and if he wanted the truck unloaded they would have to come and do it themselves. And he told me that — so, we're going to send somebody down to do it which they sent a terminal manager out of Toledo, Ohio, and he come down to pick me up to carry me to the bus station, which was no more than ten blocks away. And I told him I was hurting and I needed something for the pain. I asked him would he take me to the hospital.

Testimony of Jesse Kelly

He said, "No, you are not hurt that bad." He left me at the bus station for four hours to catch a bus back to Detroit. And a white driver, like John Vetriano, he was in Flint, he was just a pain in his chest, nobody tried to play doctor with him. They rushed him to the hospital.

* * *

Q Mr. Kelly, where did you get your understanding of what happened to Mr. Vetriano?

THE COURT: I want to find out about the Flint situation.

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A About Irv Petty?

Q (By Ms. Gmeiner): We're talking about — you testified that someone was taken to the hospital when he had a pain in his heart. How did you learn about this?

A I was down there. I was down there after they had taken him to the hospital.

Q So, you saw this occur?

A Yes.

Q And what is this gentleman's name you said that —

A John Vetriano.

Q How old is Mr. Vetriano?

A In his early thirties.

Q Did you go back to work after this injury?

A The doctor told me that I couldn't do any heavy lifting and I approached the terminal manager, Sal Monforte, and he told me that I could not go back to work unless I was 100% able to do the job, and I also know of John Vetriano, and which is a white driver was in Aurora, fell into the grease pit, broke his leg and never lost a day of work. They had him working in a cast. We went to Aurora together. He was ahead of me, and I was behind him, and when they called us out of Aurora they called him and he connected up to a run into another terminal, a foreign terminal. All of them is foreign other than your own, and they let him lay there until

Testimony of Jesse KellyTr. Vol. III, p. 77

they got him a straight run home.

THE COURT: What?

THE WITNESS: They got him a run that come straight home from Aurora.,

Q (By Ms. Gmeiner): Are you saying, Mr. Kelly, that you took the run that was scheduled for Mr. Vetriano?

A Yes, I did.

Q Why did you take that run?

A Because they called me to take it.

Q Why didn't he take it?

A Because he had a broke leg and he couldn't do any dropping and hooking.

Q Do you know of any other situation similar to this one?

A Yes, Irv Petty.

Q What happened to Mr. Petty?

* * *

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* * *

Q (By Ms. Gmeiner): Mr. Kelly, what have you seen occur with Mr. Petty?

A Well, I've seen him refuse to like — he was ordered to drop and hook a set in Jackson, and he told the dispatcher while I'm standing there that his back was hurting and he's not going to pull no dolly across the yard, and they said, "okay". So they sent him home.

Q And did he subsequently return to his home terminal?

A Yes, he did.

Q Did you see him drive out?

A We went in together.

Q I'm going to put a document into evidence, please mark this as Plaintiff's —

THE COURT: What number?

MS. GMEINER: Number Five.

(whereupon Plaintiff's proposed Exhibit Number Five was marked by the Court Reporter.)

Q (By Ms. Gmeiner): Can you identify this document, Mr. Kelly?

Testimony of Jesse Kelly

A Yes.

Q And what is it?

A It's a charge of discrimination against Consolidated Freightways, which I filed through Civil Rights.

Q Okay. And the date of this charge?

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* * *

A 6-19-78.

MS. GMEINER: I'd like to move this into evidence.

THE COURT: No objection?

MR. CWIEK: No objection, Your Honor.

THE COURT: It's in. Can I see it, please?

Q (By Ms. Gmeiner): What happened after you filed the Civil Rights charge, Mr. Kelly?

A Well, I started getting reprimands for disciplinary action was taken because I feel like it was because I filed EEOC charges, and like several incidents after that, after I filed the charges I would get reprimands for logs, defrauding my logs.

Q How did that happen that you got a disciplinary letter for defrauding your logs?

A On the twentieth of September of '78 we had a meeting in Detroit before going to Aurora. Dick Saunders, Sal Monforte, Bob Russell, Joe Tildon, they was all in this meeting, and they was talking about my record of unavailability. They wanted to discharge me at that time.

Q What was your record of unavailability?

A On the record of unavailability at that time I was accused of

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— even if I get sick I'd get suspended for several days for getting sick, something that I could not help myself.

Q Is there a particular occasion where you got sick and were suspended?

A Yes, on August the seventh I accepted a work call to go to work, and I got up to go to work and I got sick. I started bleeding. I had a bleeding ulcer, and I called in

Testimony of Jesse Kelly

and told them that I couldn't make it because of the bleeding ulcer, so they dropped me from the board. I received a letter of suspension for seven days for unavailability.

Q And did you have other unavailabilities on your record?

A Yes, one for calling in to tell them I was going to go to the doctor, which I guess Ricardo did not tell Rob Christian.

Q Who is Ricardo?

A He's the dispatcher, and he didn't tell them, so I guess they called after he was relieved from duty, and when I got back in I called and they told me I was dropped, and I also got unavailability for that one. And another one is when I called in to ask the dispatcher whether I was on the board, and he told me later on this evening, around five o'clock, so I leave home around twelve, and 12:01 he called me.

Q Was this a practice that you could call in to the dispatcher and find out where you were on the board?

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A Yes.

Q You were following an accepted practice when you did that?

A To keep from dropping, I wanted to run. He told me about five o'clock. I had something to do, so I was going out to do it.

Q Did you grieve these unavailabilities, Mr. Kelly?

A At that time, the first part when Mr. Saunders was a union steward he told me that it wasn't important to grieve these, because it wasn't worth the paper they was written on. These were his words. After he become management he turned around and used the same letters that was no good when he was a union steward and suspended me for three days, the first suspension I got.

Q And then did you file another Civil Rights charge, Mr. Kelly?

A Yes, I did.

THE COURT: What happened to this Civil Rights case?

THE WITNESS: They still pending.

(Whereupon the Court Reporter marked Plaintiff's proposed Exhibit Number Six.)

Testimony of Jesse Kelly

Q (By Ms. Gmeiner): Do you recognize this document, Mr. Kelly?

A Yes.

Q What is it?

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A It's a letter of discrimination against Consolidated Freightways for the alleged charge on October the ninth.

Q Did you file that charge?

A Yes, I did.

MS. GMEINER: I'd like to move this into evidence also.

THE COURT: Any record?

MR. DAMM: No, sir.

THE COURT: It's in.

Q (By Ms. Gmeiner): After you filed this charge, Mr. Kelly, what happened to you then?

A Well, after I filed this charge for the logs, like Mr. Saunders said, that if you know the only thing that I knew about the logs, that the logs was missing. I received a letter of suspension.

THE COURT: I can't hear.

A The letter I received, a letter of seven day suspension for logs they say I did not turn in. As a rule you turn them in every day that you run. If it's after twelve o'clock, go into the next day, and I know the other drivers, they are given a chance to make up their logs if there are any missing. They were missing mine for a whole month, and after the suspension, after the suspension when I returned to work and in front of other drivers Nancy Barkley told me

Tr. Vol. III, p. 83

that they had found my logs.

Q Did you grieve that?

A Yes, I had a grievance against this, yes.

Q And did you prevail in the grievance? Did you win the grievance?

A Yes, I did.

Q Were you —

THE COURT: Did you what?

Testimony of Jesse Kelly

- Q (By Ms. Gmeiner): Did you win the grievance. Did you receive further discipline after the filing of the charge of October 9?
- A Yes, I did.
- Q And what happened to it?
- A I also filed a grievance against this.
- Q I'm sorry. The question was, were you disciplined after October 9th.?
- A Yes, I was.
- Q And what was that about?
- A They lots some more log sheets.
- Q Have you ever been discharged, Mr. Kelly?
- A Yes, I have.
- Q And for what reason?
- A Well, at the time I was on suspension for the last of the logs they suspended me for — they fired me for coming in

Tr. Vol. III, p. 84

- late, and they say sixteen minutes after five years.
- MR. CWIEK: Excuse me, Your Honor. Could we set these occurrences in time?
- A December the 4th, of 197- —
- THE COURT: Would you bring out the context.
- Q (By Ms. Gmeiner): When were you discharged, Mr. Kelly?
- A December 4th., 1978.
- Q And this was for what?
- A For coming in late for the first time in five years.
- Q And how did that happen? What happened, how late were you?
- A Sixteen minutes.
- Q What happened to keep you from — what caused you to be late that day?
- A I was accident on Southfield, and I couldn't get off the expressway to call. First chance I got to get off the expressway I went to the first phone and I called in and Ricardo Simmons was on duty, the dispatcher, and I told him, he said if you can't be here within the fifteen minutes allowed, don't come at all.
- Q I want to backtrack to one question that I overlooked

Testimony of Jesse Kelly

before. You talked about a Mr. Petty, Mr. Kelly, you said you saw him refuse to drop and hook. Did you see Mr. Petty being disciplined?

A No, I didn't.

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Q Do you have any knowledge of whether he was disciplined?

A No he didn't - he wasn't disciplined.

Q I'm sorry.

A No discipline was —

Q What is Mr. Petty's race?

A He's white.

Q Mr. Kelly, since Jesse Becton was fired on May 14th., 1979, what is your feeling about filing Civil Rights charges?

A I'd really be afraid to, because you're putting your job on the line, because they don't work fast enough and they keep digging, the company keeps digging and trying to find different ways to get rid of you.

MS. GMEINER: I have no further questions.

THE COURT: Counsel?

CROSS-EXAMINATION BY MR. CWIEK:

A Mr. Kelly, as you may have heard me in the courtroom, my name is Ted Cwiek. I am the attorney for Local 299. I am going to ask you some questions. If you have some confusion about the questions, you can indicate that and I'll try to rephrase it so you can understand it.

Now, Mr. Kelly, you've testified regarding an incident where you received a back injury unloading freight; is that correct?

A Yes.

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Q Where did that occur?

A Napoleon, Ohio.

Q And the employer sent you home at that point; is that correct?

A Which employer?

Q Your employer, Consolidated Freightways, provided you with bus transportation home; is that correct?

Testimony of Jesse Kelly

- A About five hours later.
 Q Did you file a grievance concerning that incident?
 A No, I was off hurt.
 Q You were off on Workmen's Compensation Injury?
 A Right.

* * *

- Q (By Mr. Cwiek): Now, I believe you also testified you received a seven day suspension regarding some accusation of unavailability, and that was on August the seventh?
 A Yes.
 Q What year was that?
 A '78.
 Q And did you file a grievance regarding that seven day suspension?
 A No, I didn't.
 Q Now, you also received reprimands for being unavailable,

Tr. Vol. III, p. 87

- written reprimands; is that correct?
 A Yes.
 Q Did you file grievances with respect to those written reprimands?
 A Yes, I did that after, I did.
 Q What was the result of those grievances?
 A I won most of them.
 Q Those grievances were processed to Local Level Hearings; is that correct?
 A Local Level Hearings.
 Q Were they resolved at Local Level Hearings?
 A No, they were not.
 Q Were they then pursued to the Joint Arbitration Committee?
 A Yes.
 Q And was a resolution reached at that committee?
 A Yes.
 Q And those grievances were resolved in your favor?
 A Yes.
 Q And did Mr. Earl Grayhek of Local 299 represent you with respect to those grievances?

Testimony of Jesse Kelly

A Yes, he did.

Q Now, I believe you've also testified that you received a seven day suspension with respect to your loss; is that correct, your log books?

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A Yes.

Q When did you receive that suspension?

A Let me see. In September, I think it was.

Q Of what year, Mr. Kelly?

A Of '78.

Q Did you file a grievance regarding that suspension?

A Yes, I did.

Q And was that grievance processed by Local 299?

A Yes, it was.

Q Was it processed to a Local Level Hearing?

A Yes.

Q Was a resolution reached at the Local Level Hearing?

A No.

Q Was the grievance processed to the Joint Arbitration Committee?

A Yes.

Q And was a resolution reached at that Arbitration Committee?

A Yes, it was.

Q And what was the result?

A In my favor. It was in my favor.

Q Were you paid for the time loss on your suspension?

A Yes.

Q Were you represented by Mr. Grayhek?

A Yes, I was, and Ms. Jeanne Mirer.

Q Ms. Mirer represented you as well?

Tr. Vol. III, p. 89

A Yes, she was there.

Q She went into the hearing room and represented you before the committee?

A Yes.

Q You're sure about that?

A Positive.

Testimony of Jesse Kelly

- Q Now, you were discharged in December of 1978; is that correct?
- A Yes.
- Q Okay. And it was for coming in late; is that correct?
- A Yes, it was.
- Q Did you file a grievance concerning that discharge?
- A Yes, I did.
- Q Was that grievance taken to a Local Level Hearing?
- A Yes, it was.
- Q Was it resolved at that Local Level Hearing?
- A No, it wasn't.
- Q Was it then processed to the Joint Arbitration Committee?
- A Yes, it was.
- Q Was a resolution reached at that committee?
- A Yes, it was.
- Q What was the decision of the committee?
- A To put me back to work and to pay me a sum of all the logs and all this come in together. All this was at the same

Tr. Vol. III, p. 90

- hearing.
- Q So, your suspension grievance and your discharge grievance were heard at the same time by the Joint Arbitration Committee?
- A Yes.
- Q And you were returned to work?
- A Yes, I was.
- Q And you were given some back pay; is that correct?
- A Yes.
- Q What amount of back pay; do you recall the period of your suspension?
- A They only give me sixty-four hours of my back pay from the suspension of the logs and everything, and they also found discrimination against the company towards me.
- Q The Joint Arbitration Committee —
- A Yes.
- Q — indicated to you that there had been discrimination on the part of the company?
- A Yes.

Testimony of Jesse Kelly

Q And they indicated that to the company?

A Yes.

Q And is this the same hearing that you testified to earlier, at which you were represented by Mr. Grayhek?

A Yes.

Q Now, Mr. Kelly, have you filed any charges of discrimination

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with the Equal Employment Opportunity Commission or the Michigan Department of Civil Rights against Teamsters Local 299?

A No.

Q Mr. Kelly, can you tell the Court, from your own personal knowledge, of any specific instances of racial discrimination against you by Teamsters Local 299?

A The only thing I can say, like Mr. Grayhek refused to listen, that's the only —

Q All right. But I mean, any specific instances in which racial discrimination was —

A None.

MR. CWIEK: Thank you, Mr. Kelly.

* * *

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Testimony of Jesse Kelly

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* * *

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* * *

REDIRECT-EXAMINATION BY MS. GMEINER:

Q Have you ever been discharged, Mr. Kelly, before you filed

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A your first Civil Rights charge?
No.

MS. GMEINER: I have no further questions.

THE COURT: You may step down.

MS. GMEINER: Next witness will be Aaron Drake.

- - -

AARON DRAKE,

was thereupon called as a witness herein, and after having been first duly sworn to tell the truth, the whole truth and nothing but the truth was examined and testified as follows:

THE COURT: Give us your name and spell your name.

THE WITNESS: Aaron Drake, A-a-r-o-n, D-r-a-k-e

DIRECT-EXAMINATION BY MS. GMEINER:

Q What is your address, Mr. Drake, for the record?

A 6068 Vermont, Detroit.

Q And for the record, what is your race?

A I'm black.

Q And how old are you?

A Thirty-seven.

Q How long have you been employed at Consolidated Freightways?

A Approximately three years, five months.

Testimony of Aaron DrakeTr. Vol. III, p. 103

- Q Are you familiar with the Uniform Rules and Regulations of Consolidated Freightways?
- A I am.
- Q Do you know what a 3(g) offense is?
- A I do.
- Q What is it?
- A Flagrant disobeying of an order.
- Q Have you ever been charged with a 3(g) offense?
- A Several occasions.
- Q When was the most recent occasion you were so charged? I'm sorry. Tell me about the 3(g)'s that you've received?
- A Well, first one — I don't have a record of it, but the company does. It's not really a 3(g) actually, it's misrepresented. It's actually a lesser offense, but they got me listed as a 3(g).
- Q What did you do?
- A I failed to call in from Kalamazoo in or out from Peru, Illinois.
- Q And how is it that you failed to call in?
- A Just overlooked it, forgot it.
- Q Have you been told to call in?
- A No, just list it on the bottom of your pay sheet. They got a stamp on the pay sheet. They sloppily stamped over it, I just missed it.

Tr. Vol. III, p. 104

- Q Is this a copy of that pay sheet?
- A Yes, it is.
- MS. GMEINER: I'd like to have this amrked.
- THE COURT: Keep your voice up so people can hear.
- MS. GMEINER: I'm sorry.
- THE COURT: Either that or don't say a word when you get back here, and get back there and say your words. (Whereupon Plaintiff's proposed Exhibit Number Seven was marked for identification by the Court Reporter.)
- Q (By Ms. Gmeiner): Is that a copy of that pay sheet?
- A It is.
- MS. GREINER: This is Plaintiff's Exhibit Seven. I'd like to move that this be accepted into evidence.

Testimony of Aaron Drake

THE COURT: No objection, I gather?

MR. DAMM: No sir.

MR. HOFFA: No objection, Your Honor.

THE COURT: It's in.

Q (By Ms. Gmeiner): You said, Mr. Drake, that there was another charge that would have been more applicable to this offense, what is that?

A That is a 4(c), almost word for word, where I failed to call

Tr. Vol. III, p. 105

in to the dispatcher at a specified time and place while on duty.

Q And are we talking about a 4(c) of the Uniform Rules and Regulations?

A Right.

Q Do you know what the penalty is for 4(c)?

A Yes, first offense is reprimand; second is three days off, unless it's an aggravated offense.

Q What is the penalty for a second 3(g), if you know?

A Beg your pardon?

Q What is the penalty for a second offense of 3(g), if you know?

A Discharge.

Q Did you receive another 3(g)?

A Yes, I did.

Q What was that?

A August 19th. I reported for work as of last year —

MR. DAMM: Excuse me, Mr. Drake. I'd like to have a year.

THE WITNESS: I just said last year.

MR. DAMM: August 19th. —

THE WITNESS: Of 1979.

A I received a work call from Ricardo Simmons. I accepted. I've got two hours to report for work. About one hour later

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as I was making preparations to leave for work I suddenly had to go to the restroom. At that time I didn't know

Testimony of Aaron Drake

that was the beginning of problems. So, I went to the restroom, completed myself and proceeded to get ready to go to work and reported to work. I got about a half mile from the terminal, suddenly I had to go to the restroom again real bad. I rushed into the driveway, didn't take time to take out my radio equipment or nothing, rushed into the terminal, didn't take time to punch in. I went straight to the bathroom. I went back upstairs after I finished, I asked Rick if my local was ready. He said, "No. It's not in the yard yet. We're waiting on another driver to bring it in." I went back downstairs to the basement to the bathroom again. I couldn't stop going. So, finally I, after several trips up and down the steps, I asked Ricardo, did he have anything for a stomach-ache. He said, "no." And then I informed him that I was having problems with my system. He more or less didn't say anything, but by the time an hour had passed I went and informed him that I didn't think I was going to be able to go to work, and he said, "well, you accepted the work call. Why do you accept a work call if you know you're sick." I said, "Rick, I wasn't sick when you called me." I said, "I got sick about an hour later, and only then I thought it was to use the

Tr. Vol. III, p. 107

restroom. And now I find I've got worse problems and I need something for them. I need relief of some kind of relief because I can't stop going to the restroom." So, Ricardo Simmons, he said, "What am I going to do with my truck." I said, "Well, you have to put another man on call, the sooner you do it the sooner you can get it covered." But Ricardo said he didn't have nobody else. I said, "Well, I can't go, man, I'm sick." And he said, "Well, I tell you what, if you can't drive the truck you're fired." I said, "Well, man, I'm sick. I can't drive it even if I wanted to. Don't you understand, if I got in that truck I'd probably have to stop on the side of the road within a mile." He said, "I can't help it if you can't drive it. You're fired." I said, "Well, that's the chance you're going to have to take."

Q And what happened?

Testimony of Aaron Drake

- A So I left. I went back in and I said, "Give me my pay sheet." I punched my pay sheet and I — well, no, before I left I said, "Well, that's a chance I'm going to have to take. Give me my pay sheet." I punched it and gave it back to him, and I left out the door and I turned right around, went back in. I said, "Where is my pay sheet." He reached in the garbage can and gave it to me. I didn't say nothing. I tore my pink copy off and gave the rest back to him and I left and

Tr. Vol. III, p. 108

- scooted out to the house.
- Q You were given a 3(g) then?
- A I was given a 3(g) for that.
- Q Did you grieve it?
- A Later on I found out what they're going to do is stick by saying I refused to go to the clinic. Now, that's disobeying an order if I had done that.
- Q Did you do that?
- A No, I didn't.
- Q Were you ordered to go to the clinic?
- A Oh, sure, I would have. I was sick.
- Q Were you ordered to go to the clinic?
- A No. I thought you said, would I have gone.
- Q Were you ordered to go?
- A No, I didn't. I didn't even mention it, because I'm under the impression even today, I'm under the impression that the clinic will not treat you unless it is a job related injury.
- Q Did you grieve the discharge?
- A I sure did.
- Q What was the result of your grievance?
- A Local Hearing or result at the Arbitration Board?
- Q What happened at the local level?
- A They refused to put me back to work and the union informed them that that was my first offense that they're using as

Tr. Vol. III, p. 109

number one offense, it takes two to discharge you. The

Testimony of Aaron Drake

union informed them that that is a 4(c). I think it was an oversight on the union's part by not following for them to change that up, because I did write a grievance on it. No, I didn't write a grievance on it, because I didn't know I had it in the record. Okay. That's when I found out we had that one at the Local Level Hearing, the first 3(g). I found out we had it on my record at that Local Level Hearing.

Q You're not referring to the Local Level Hearing at your discharge?

A Right.

Q Is it correct you didn't know then the first 3(g)?

A That's right. They've still got the letter on unclaimed in their possession.

Q Were you reinstated?

A Not at the Local Level Hearing.

Q Were you reinstated at another level?

A Right, the Arbitration Board.

Q Did you get back pay?

A No.

Q Did you get your back seniority?

A Well, I don't know, because I'm still in the same slot, but I'm still confused as to what they did award me. I do know they didn't award me any back pay, and they said

Tr. Vol. III, p. 110

no fringe benefits, but put me back to work. Now, I refiled a grievance on that to get them to clarify what their decision was, and they had that re-hearing, and I'm still confused as to what clarification on that, and they still got that in my file as a 3(g).

THE COURT: Do you have any questions, Mr. Hoffa?

MR. DAMM: He's deferred to me, Your Honor.

THE COURT: All right.

* * *

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* * *

Testimony of Aaron Drake

- Q (By Mr. Damm): Have you filed Civil Rights charges against Consolidated Freightways?
- A I have.
- Q And when did you do that?
- A I forget.
- Q Can you give me a year, Mr. Drake?
- A '78.
- Q Can you give me a month?
- A No, I can't.
- Q If I told you August, would that refresh your recollection?
- A I said I couldn't.
- Q If I told you August —
- A No, it wouldn't help me any.
- Q Excuse me, Mr. Drake. Let me finish my question, please. If I told you August, would that refresh your recollection?
- A No.
- Q Did you receive discipline form Consolidated Freightways prior to filing that Civil Rights charge?
- A I've been receiving discipline form Consolidated Freightways ever since about thirty days after I got there.
- Q And what date was that?
- A September 11th., 1976, constantly.
- Q And you have grieved all of those disciplines?

Tr. Vol. III, p. 114

- A Not all of the, but the ones that just really set on me as unnecessary.
- Q I see. And had you filed any grievances prior to your filing Civil Rights charges?
- A Sure, plenty of them.
- Q And had you had those resolved, either at the Local Level or at the State Hearings?
- A A lot of them got lost. Some of them got resolved, and some of them went to arbitration.
- Q And at arbitration — you sound like you've had a lot of experience. Have you won some of those cases and lost some of those cases?
- A I won some of them, lost some of them and don't know about the others.

Testimony of Aaron Drake

- Q Were any of those — you don't know about any that deadlocked?
- A I don't know. I don't know if they ever went to arbitration. I don't know if they had just got rid of them or not.
- Q But you won some grievances and lost some, right?
- A That's right.

* * *

Deposition Testimony of Salvatore Monforte -Terminal Manager Page 8

- Q (By Ms. Mirer) I'm going to show you a document which has been marked as Monforte Deposition Exhibit 1, Mr. Monforte, and ask you if you can state for the record what that is.
- A It's the Uniform Rules and Regulations.
- Q Before you mentioned something about 3(g)s. Could you indicate what that is on here?
- A Section 3, Conduct, Item (g), Flagrant disobeying of orders.
- Q What is the penalty for a 3(g) violation?

Monforte Deposition Page 9

- A First offense, reprimand; second offense, subject to discharge.
- Q Is subject to discharge or discharge listed on here?
- A Discharge.
- Q The question is: Does that give you discretion on the second offense as to what to do?
- A I believe so.
- Q You do have discretion on the second offense?
- A I believe so.
- Q You may or may not discharge depending on the person's record or — what kinds of factors would you look to to decide whether or not you would discharge somebody on the second offense?
- A The degree of flagrancy.

Deposition Testimony of Richard Saunders - Linehaul Manager

Pp. 47-49

- Q (By Ms. Mirer) Let me put it this way: Do you have discretion as to which article to discipline under?
- A We follow the Uniform Rules and Regulations.
- Q I understand that. But under the Uniform Rules and Regulations, there are such things as drinking on duty or company property, which is 3(a), for which somebody would be subject to discharge. It doesn't mean they are discharged, does it?
- A No.
- Q It means they're subject to discharge.
- A If that's what it reads.
- Q So there is some discretion there as to whether or not a person is actually discharged.
- A Yes.
- Q And you might have that discretion as supervisor, as somebody who disciplines, as to what discipline to impose for a violation of that sort.
- A Yes.
- Q Now, 5(c) is failure to follow routings as designated or instructed, isn't it?
- A If that's what it read, yes.
- Q I'll show you.
- Do we agree that a violation of 5(c)

Saundres Deposition Page 48

- sould be a failure to follow routings as designated or instructed?
- A Yes.
- Q You agree with that. If somebody is instructed to go to Akron but instead goes to Aurora, have they violated an order or instruction?
- a . . .
- MR. DAMM: I don't understand the question.
- Q (By Ms. Mirer) If a road driver is instructed to drive to Akron but instead of following that instruction he drives to Aurora, is he guilty of disobeying an order as well as failing to follow the routing as instructed?
- A Yes, he is.
- Q Is it possible then that somebody who went to Aurora

instead of Akron as instructed could get a 3(g) instead of a 5(c), depending on who made the decision to discipline?

A It's possible.

Q So that the decision as to what article a person is disciplined under: You have some discretion in terms of which one you choose. Is that what you're saying? You could pick which one depending on what you thought the case merited at that time.

A Correct. Providing you follow the guidelines of the

Saunders Deposition Page 49

Q Are there any other guidelines that exist other than what's on this exhibit here?

A Yes. We have the National Master Freight Agreement. We have the Detroit Dispatch Rules. We have the Detroit Bid Rules.

Q What are the Detroit Dispatch Rules?

A Detroit Dispatch Rules are for our own location at Detroit.

Q Are they in writing anywhere?

A Yes.

Q How different are the Detroit Dispatch Rules from the Uniform Rules?

A How different are they?

Q Yes.

A I don't know what you mean by how different are they.

Q What do they cover? Do they cover the same things as the Uniform Rules or are they designed to deal with local conditions in Detroit?

A Basically they're local conditions for our operation.

Plaintiff's Exhibit 1

Uniform Rules and Regulations
Governing the Actions of Road Drivers, City Drivers,
Checkers and Dockers
As Revised Effective January 20, 1950.

The following rules and regulations, and the penalties to be charged for violation of same, are placed into effect, with the approval of your Union, so that all employees of the Company may know what duties are required of them in the general conduct of the Company's business.

Nothing in these rules and regulations shall abrogate the employee's right through the Union of which he is a member, to challenge a penalty through the regular grievance machinery. Rules and regulations herein contained shall not supersede any rules or regulations of present union contracts.

The Company reserves the right, upon proper notification of the Union, to revise the Rules and Regulations listed herein, and also reserves the right to the use of the grievance machinery as contained in its present contract:

* * *

3. CONDUCT:

- (a) Drinking on duty or on Company property. — Subject to discharge.
- (b) Drinking prior to reporting for duty where employee's condition is such that it may effect the proper performance of his duties. — First offense — loss of day or trip. Second offense — 3 day layoff. Third Offense — subject to discharge.
- (c) Discourtesy to customers. — First offense — reprimand. Second offense — 3 day layoff. Third offense — subject to discharge.
- (d) Theft or dishonesty of any kind. — Discharge.
- (e) Failure to turn in C.O.D. monies same day collected to person designated to receive same. — First offense — 3 day layoff. Subsequent offenses — Subject to discharge.
- (f) Shortage in C.O.D. collections. — First offense — reprimand. Second offense — 1 week layoff. Third

- offense — Subject to discharge.
- (g) Flagrant disobeying of orders. — First offense — reprimand. Second offense — discharge.
 - (h) Conviction for reckless driving. — First offense — reprimand. Second offense — 3 day layoff. Third offense — subject to discharge.
 - (i) Inaccurate loading and unloading of freight. — First offense — reprimand. Second offense — reprimand. Third offense — 3 day layoff. Subsequent offenses — subject to discharge.

4. REPORTS:

- (a) Failure to properly make out reports and trip sheets. — Reprimand to 3 day layoff.
- (b) Failure to register in and out of terminals or established check stations. First offense — reprimand. Subsequent offenses — 3 day layoff.
- (c) Failure to report to dispatchers at specified time when required to do so, while on duty. First offense — reprimand. Second offense — 3 day layoff, to discharge in aggravated cases.

* * *

Minor offenses against any employee's record that are over six months old shall be forgiven and the employee's record wiped clean.

A major offense against any employee's record that is over nine months old shall be forgiven and the employee's record wiped clean.

NOTE 1: A minor offense is defined as one for which the penalty is a reprimand.

NOTE 2: A major offense is defined as one for which the penalty is disciplinary time off.

A warning notice in writing with a copy to the local Union must be given for infractions of any rules or regulations.

Discharge must be by proper written notice, with a copy to the local Union.

Defendant's Exhibit 12

Motor Carriers Employers' Association of Michigan
100 West Long Lake Road - Suite 102
Bloomfield Hills, Michigan 48013
Area Code (313) 645-9600

Minutes of the Meeting of the
Michigan Joint State Cartage and
Over-The-Road Arbitration Committee

Held July 10-11, 1979

The Somerset Inn
Big Beaver Road
East of Coolidge Road
Troy, Michigan 48084
Area Code (313) 643-7800

* * *

379. Local Union No. 299 (Detroit) v. Consolidated Freight-
ways:

Re: Discharge of Jesse Becton arising 5/16/79.

DECISION: Based upon the facts and evidence presented, the Committee held that the discharge of Jesse Becton is upheld inasmuch as it was his second flagrant disobeying of orders penalty.

Plaintiff's Exhibit 195

IN THE UNITED STATES DISTRICT COURT
 FOR THE EASTERN DISTRICT OF MICHIGAN
 SOUTHERN DIVISION

JESSE H. BECTON,

Plaintiff,

Civil Action No. 7974785
 Judge Charles W. Joiner

-VS-

The Detroit Terminal of CONSOLIDATED
 FREIGHTWAYS (CF) and LOCAL 299 of the
 International Brotherhood of Teamsters,
 Chauffeurs, Warehousemen and Helpers
 of America (IBT),

Defendants.

ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES
 AND REQUEST FOR PRODUCTION

NOW COMES CONSOLIDATED FREIGHTWAYS (hereinafter referred to as "CF") by and through its counsel, SPICER AND LITTMAN, P.C., and answers Plaintiff's First Set of Interrogatories as follows:

1. CF hereinafter sets forth the number of transport operators as requested in Interrogatory 1 for the period beginning with and after June, 1976 and states that before the before-mentioned dated would be not pertinent to the instant lawsuit:

June 30, 1976	-	28 Total	-	7 Black
December 31, 1976	-	31 Total	-	10 Black
December 31, 1977	-	39 Total	-	10 Black
December 31, 1978	-	45 Total	-	10 Black

December 1979 will be made available as soon possible to counsel.

2. CF attaches hereto and makes a part hereof a list of the names of transport operators domiciled in Detroit as of December 1978 which together with list of inactive files per agreement between counsel April 7, 1980.

E. R. Morse	-	C
E. F. Harger	-	C
W. Bober	-	C
D. A. Nutt	-	C
J. A. Bentley	-	C
E. E. Petty	-	C
R. E. Glisson	-	C
A. Dew	-	C
J. E. Douglas	-	C
A. C. Bell	-	B
D. J. Rhoades	-	C
T. G. Bryant	-	B
H. J. Colthorp	-	C
W. S. Lucas	-	C
B. E. Russell	-	C
J. O. Wallace	-	B
G. F. Humphrey	-	C
R. L. Parker	-	B
W. A. Jones	-	B
A. Bell	-	B
A. R. Drake	-	B
M. C. Becker	-	C
J. C. Vettraino	-	C
J. H. Becton	-	B
A. E. Stamper	-	C
W. S. Mann	-	C
A. L. Cronk	-	C
R. G. Phipps	-	C
T. D. Whitsett	-	C
J. A. Johnson	-	B
J. J. Olle	-	C
J. R. Kimbel	-	C
E. J. Rozema	-	C
W. E. Tolbert	-	B
L. L. Favaro	-	C
R. P. Hirt	-	C
D. M. Cox	-	C
M. L. Moss	-	C
J. C. Fetterly	-	C

D. M. Snyder	-	C
E. T. Wieland, Jr.	-	C
C. W. Wilson	-	C
D. L. Kozen	-	C

3. CF states that they have not hired a minority transport operator since May 14, 1979 and, further in the instant case, the court has restricted discovery to May 14, 1979.

* * *

6. CF states that Plaintiff has been provided with the personnel files of all transport operators discharged between September 1, 1977 and the present. Thus, Plaintiff has before him all information requested in Subsections A and B.

List of drivers identified by race who are on inactive status is as follows:

John Vettraino	-	W
Ervin Petty	-	W
Robert Wesner	-	W
Richard Parker	-	B
Edward Gardiner	-	W
Johnny Perkins	-	W
Arthur Rosemann	-	W
Thomas Bowen	-	W
Fred Williams	-	B
William Pitts	-	W
Kenneth Crout	-	W
Robert Armstrong	-	B
Allen Marr	-	W
Harold Pattenau	-	W
Daniel Bellante	-	W
Eddie Blake	-	B
William Bober	-	W
William M. King	-	W
Wilbur S. Mann	-	W
Tony Oliver	-	W
Peter Leinen	-	W
David Cox	-	W

7. CF states that no other Detroit-based transport operator was disciplined under Rule 3(g) of the Uniform Rules

and Regulations for failure to drop a hook or drop for the period requested.

8. CF states that no Detroit-based transport operator has been disciplined for refusing to drop and hook or refusing to drop a trailer with the exception of the Plaintiff.

* * *

15. CF states that Interrogatory 15 is not relevant to the instant matter.

* * *

23. Answers to the above questions were provided to counsel by Assistant General Counsel, Eberhard Schmoller, and Richard J. Saunders.

SPICER AND LITTMAN, P.C.

s/ F. R. Damm

F. R. DAMM (P12462)
Attorney for Defendant CF
Spicer and Littman, P.C.
200 Renaissance Center
Suite 3720
Detroit, Michigan 48243
(313) 259-1810

DATE:

Plaintiff's Exhibit No. 11

EMPLOYEE STATUS NOTIFIATION

(Form - Answers filled in:)

Date: 1/20/79

Employee - Presently Employed:

X in box - Terminated (would not re-hire)

Name:

Armstrong, R.C.

Social Security No.: 259/54/9864/02116

Address: 16473 Conley, Detroit, MI 48234

Birthdate: 3/20/39

Sta/Unit: 320/30

Marital Stat: M

Sex: M

First Day worked: 9/28/76

Job Title: HR-Transport Operator

Union/Local No. 0299

Union Sen. Date: 9/28/76

P/R Status: Reg.

Chauff.D/L Expir. Date: 3/20/78

Physical Exam Exp. Date: 8/04/78

Deduct City Tax: X in box Yes

Remarks: Discharged from employment to be effective
5/18/79.

Approvals (Supervisor Signature-Date)

s/ R. J. Saunders 5/18/79

s/ G. L. Detter 5/21/79

s/ S. A. Monforte 5/18/79

s/Jim Deller 5/24/79

Plaintiff's Exhibit No. 12

August 8, 1978

Mr. C. R. Banning
4650 Telegraph, Lot 28
Pat Trailer Court
Dearborn Hts., MI 48125

Dear Mr. Banning:

This letter is being issued in accordance with Article 46 of the Central States Over-The-Road Supplemental Agreement for the following:

On July 25, 1978, you were issued a letter of final consideration concerning your work record. On Saturday, August 5, 1978, you dropped your bid run, therefore, you are hereby terminated from employment at Consolidated Freightways as of August 7, 1978. All monies due you will be available at your request.

Respectfully,

CONSOLIDATED FREIGHTWAYS

s/ R. J. Saunders
R. J. Saunders
Dispatch Operations Manager

RJS/cll

cc: S. Monforte, DET
M. McDorman, CAH
E. Grayhek, Local #299, Certified Mail
B. Russell, Steward
Personnel File, Certified Mail

Plaintiff's Exhibit 13

November 3, 1979

Mr. Charles R. Banning
4650 Telegraph Lot 28
Pats Trailer Court
Dearborn Hts., MI 48125

Dear Mr. Banning:

This letter is being issued in accordance with Article 46 of the Central States Over-The-Road Supplemental Agreement for the following:

You are hereby discharged from employment from Consolidated Freightways because of the violation of the probation agreement issued on August 14, 1978, concerning your attendance.

Respectfully,

CONSOLIDATED FREIGHTWAYS

R. J. Saunders
Linehaul Operations Manager

RJS/cll

cc: S. Monforte, DET
M. McDorman, CAH
E. Grayhek, Local #299, Certified Mail
B. Russell, Steward
File, Certified Mail

Plaintiff's Exhibit 14

January 30, 1978

Mr. M. C. Becker
8320 Roselawn
Westland, MI 48185

Dear Mr. Becker:

You are hereby discharged under the just cause clause of Article 46 of the Central States Over-The-Road Supplemental Agreement. This is a result of an incident which occurred Thursday, January 26, 1978. Suspension is hereby reduced to a one week suspension. You will be placed on the active board in Detroit at 2201 hours, Wednesday, February 1, 1978.

Any further instances of this nature will be dealt with in the appropriate disciplinary manner.

Very truly yours,

CONSOLIDATED FREIGHTWAYS

R. A. Christian
Dispatch Operations Manager

RAC/cil

cc: S. Monforte, DET
M. McDorman, CAH
E. Grayhek, Local #299, Certified Mail
R. Saunders, Steward
Personnel File, Certified Mail

Plaintiff's Exhibit 15

May 16, 1979

Mr. Jesse Becton - 43255
11726 Todds Lane
Whitmore Lake, MI 48189

Dear Mr. Becton:

This letter is issued under Article 46 of the Central States Over The Road Supplemental Agreement for the following:

On Monday, the 14th of May, you arrived at the Jackson, Michigan, terminal at 1339 hours with units 16-4349, 9-2893 and 29-3524, your instructions that were given to you by the on duty supervisors, were to drop trailer 29-3524 in the Jackson terminal yard and then go on to Detroit, Michigan. You told the on duty supervisors that you would not drop and hook at the Jackson terminal. You again were instructed to unhook trailer 29-3524 in which you again refused to do. You were then told you would be suspended for flagrant disobeying of orders. Bus transportation for your return trip home was provided but you refused and found your own transportation into the terminal in Detroit.

Therefore, under the Uniform Rules and Regulations of which this is your third offense, you are hereby discharged from employment from Consolidated Freightways. All monies due will be made available upon your request.

Respectfully,

CONSOLIDATED FREIGHTWAYS

R. J. Saunders
Linehaul Operations Mgr.

RJS/cil

cc: S. Monforte, DET
J. Detter - DET
M. McDorman, CAH
E. Grayhek, Local #299, Cert. Mail - 43256
B. Russell, Steward

Plaintiff's Exhibit 16

November 17, 1978

Mr. David Cox - 42642
1742 Gregory Street
Lincoln Park, MI 48146

Dear Mr. Cox:

You were involved in a major preventable accident on November 14, 1978. Under Article 46 of the Uniform Code, Article 1A, you are hereby terminated from employment at Consolidated Freightways effective immediately.

All monies due you will be available at your request.

Respectfully,

CONSOLIDATED FREIGHTWAYS

s/ S. A. Monforte
S. A. Monforte
Terminal Manager

SAM/cll

cc: M. McDorman, CAH
E. Grayheck, Local #299, Certified Mail - 42643
R. Russell, Steward
File, Certified Mail

Plaintiff's Exhibit 19

March 27, 1978

Mr. A. R. Drake
6068 Vermont
Detroit, MI

Dear Mr. Drake:

This letter is issued under Article 46 of the Central States Over-The-Road Supplemental Agreement for the following:

On Sunday, March 19, 1978, at 0459 hours, you were contacted for dispatch. You dropped for 12 hours at that time—personal reasons.

This is your third such infraction of Detroit Dispatch Rule 3B—Driver Availability. You are therefore to be suspended for one day.

This infraction is your third major offence, therefore, under Rule 7, Section (C) of the Uniform Rules and Regulations, you are hereby discharged.

All monies due you will be made available upon request.

Very truly yours,

CONSOLIDATED FREIGHTWAYS

s/ R. A. Christian/cll
R. A. Christian
Dispatch Operations Manager

RAC/cll

cc: S. Monforte, DET
M. McDorman, CAH
E. Grayhek, Local #299, Certified Mail
B. Russell, Steward
Personal File, Certified Mail

Plaintiff's Exhibit 20

February 13, 1978

Letter of Discharge

Mr. R. Glisson
26021 Lori
Taylor, MI 48180

Dear Mr. Glisson:

This letter is issued under Article 46 of the Central States Over-The-Road Supplemental Agreement for the following:

On Monday, February 6, 1978, at 2245 hours, you were called for work in Aurora, Illinois. Your dispatch time was for 0045 hours on February 7, 1978, but you did not depart Aurora until 0344 hours.

As you are in violation of Uniform Rules and Regulations, Rule 6, Section C, Reporting Late for Work, you are issued this warning letter.

This is your fifth such offence in nine months.

You are subject to discharge under Rule 6, Section C for subsequent offences. Discharge is being reduced to a three day lay off. Lay-off is to begin 0001 hours, Wednesday, February 15, 1978, and continue for 72 hours. If you are on a trip at this time, you will be taken off for 72 hours following your return to Detroit.

Any further instances of this infraction will result to additional disciplinary action up to and including discharge.

Very truly yours,

CONSOLIDATED FREIGHTWAYS

s/ R. A. Christian

R. A. Christian
Dispatch Operations Manager

Plaintiff's Exhibit 20

RAC/cll

cc: S. Monforte, DET
M. McDorman, CAH
E. Grayhek, Local #299, Certified Mail 21397
R. Saunders, Steward
Personnel File, Certified Mail 21396

Plaintiff's Exhibit 22

December 4, 1978

Mr. Jessie Kelly - 42723
104 Terry
Detroit, MI 48228

Dear Mr. Kelly:

On September 20, 1978, in a meeting with Earl Grayhek of Local #299 and yourself, it was agreed that you would be put on final notice concerning your attendance.

On November 26, 1978, you were given a work call at 0045 hours to report to work as of 0300 hours you had not shown up to work at which time you were dropped from the driver board. Therefore, under Article 46 of the Central States Over-The-Road Supplemental Agreement, you are hereby discharged from employment with Consolidated Freightways.

Respectfully,

CONSOLIDATED FREIGHTWAYS

R. J. Saunders
Linehaul Operations Manager

RJS/cll

cc: S. Monforte, DET
M. McDorman, CAH
E. Grayhek, Local #299, Certified Mail - 42724
B. Russell, Steward
File, Certified Mail

Plaintiff's Exhibit 23

January 12, 1978

LETTER OF DISCHARGE

Mr. R. E. Russell
22066 La Fons
Romulus, MI 48174

Dear Mr. Russell:

On Monday, January 9, 1978, at approximately 0110 hours, you were dispatched to Akron, Ohio, with units 70-107, 45-4 and 29-3408. You refused to pull this run.

You are hereby discharged under the just cause provision of Article 46 of the Central States Over-The-Road Supplemental Agreement.

All monies due you are enclosed.

Very truly yours,

CONSOLIDATED FREIGHTWAYS

s/ R. A. Christian

R. A. Christian
Dispatch Operations Manager

RAC/cil

cc: S. Monforte, DET
M. McDorman, CAH
E. Grayhek, Local #299, Certified Mail
R. Saunders, Steward
Personnel File, Certified Mail

Enc.

Plaintiff's Exhibit 24

December 11, 1979

Mr. William Tolbert 36504
19356 Pieson
Detroit, MI 48228

Dear Mr. Tolbert:

This letter is issued under Article 46 of the Central States Over-The-Road Supplemental Agreement.

On December 10, 1979, you were called at 1639 hours, again at 1703 hours, and also 1720 hours, you were unavailable for work on all three calls.

Therefore, since on July 25, 1979, you were placed on final notice concerning your absenteeism, you are hereby discharged from employment with Consolidated Freightways.

Any and all monies due will be made available to you at your request.

Respectfully,

CONSOLIDATED FREIGHTWAYS

s/ R. J. Saunders

R. J. Saunders
Linehaul Operations Mgr.

RJS/cll

cc: N. Vecchio, DET
M. McDorman, CAH
E. Grayhek, Local #299, Cert. Mail 36505
R. Parker, Steward
File, Cert. Mail

Plaintiff's Exhibit No. 30

June 7, 1973

Charles Schmaltz
Line Haul Supervisor
Detroit, Michigan

On May 31, 1973, Detroit Transport Operator John Douglas arrived in Lansing from Aurora with Tractor 16-120 and trailer 29-1233 and 29-833 at 1658. The frontbox 29-1233 was for Lansing and the rear box 29-833 was destined for Detroit. At 1700 hours all our city men were on the street peddling and making pick ups. Ernest Zsigo, Freight Operation Manager asked Mr. Douglas to drop trailer 29-1233 and hook 29-2949 an empty to trailer 29-833. Mr. Douglas refused to do as was instructed, stating that "this was city work and he would not take work away from city drivers." Mr. Zsigo explained that our city drivers would not be back to the terminal for over an hour. Mr. Douglas still refused to comply with his instructions. We then called the Detroit terminal and talked with Bill, to explain the situation. Driver Salesman Ken Hornby came off the street and proceeded to hook-up the unit. Mr. Douglas punched out at 1800/31 and proceeded to Detroit.

s/ John R. Jankovich
John R. Jankovich
Lansing, Michigan

Plaintiff's Exhibit 29CONSOLIDATED FREIGHTWAYS
INTER-DEPT. MEMO

(Hand-written: as follows:)

TO: Fred Dyhemmen

From: Bill Coltman

Date: 3/17/78

Subject: Det T/O (transport operator) W. King - flat tire

T/O originally had unit parked on expressway. He had gone past truck stop 4 miles when failure occurred. T/O left unit and got a ride back to truck stop. Next turnaround was 5 miles ahead. I told T/O to go back out & get the unit and bring it into the truckstop. T/O asked me why we always gave him a hard time each time he calls in.

At 2000 I had not heard from T/O so I called Detroit Dispatch and asked if they had put him to bed. They had not even heard from him at all. I called the truck stop and talked to T/O King. T/O King told me he wasn't aware he should call his dispatcher when he is down. I told T/O King that it had been 5 hours since I heard from him and was wondering why he hadn't called. He said he was still there and would call every 2 hours if we wanted him to. At 2000 I told T/O King to call back in 45 mins. if not ready, as of 2135 I have not heard from him yet.

Plaintiff's Exhibit 169

March 24, 1978

Mr. W. M. King
827 Girard Road
Sherwood, MI 48066

Dear Mr. King:

This letter is issued under Article 46 of the Central States Over-The-Road Supplemental Agreement for the following:

As of 1526, March 20, 1978, you have failed to turn in logs for February 13 through February 20, 1978. You are in direct conflict with Motor Carrier Safety Regulations, Section 295.8, subsection (R) - Filling Driver Logs. You are therefore, in violation of Uniform Rules and Regulations, Rule 4, Section A—Failure to properly make out reports and trip sheets.

This is also your third offence in a 60 day period. Therefore, you are subject to a three day layoff per Uniform Rules and Regulations, Rule 7, Section B, Penalty for three minor offences in a 60 day period.

Layoff to begin at 0001 on March 21, 1978 and continue for 72 hours.

Very truly yours,

CONSOLIDATED FREIGHTWAYS

s/ S. A. Monforte
Terminal Manager

s/ W. M. King

SAM/cll

cc: M. McDorman, CAH
E. Grayhek, Local #299, Certified Mail
B. Russell, Steward s/B. Russell OK
Personnel File, Certified Mail

Plaintiff's Exhibit No. 170

March 8, 1978

Mr. W. M. King
827 Girard Road
Sherwood, MI 49089

Dear Mr. King:

Due to our present level of business, your three day layoff is being reduced to one day. This three day layoff was explained in a letter dated March 6, 1978.

Very truly yours,

CONSOLIDATED FREIGHTWAYS

R. A. Christian
Dispatch Operations Manager

RAC/cll

cc: S. Monforte, DET
M. McDorman, CAH
E. Grayhek, Local #299, Certified Mail
Personnel File, Certified Mail

Plaintiff's Exhibit No. 171

March 6, 1978

Reduced to 1 day off

Mr. W. M. King
827 Girard Road
Sherwood, MI 49089

Dear Mr. King:

This letter is issued under Article 46 of the Central States Over-The-Road Supplemental Agreement for the following:

On Friday, March 3, 1978, at 0446 hours, you departed Detroit, Michigan to Aurora, Illinois. Your units were to have been 16-3882, 9-1776 and 29-4193, however, instead of 9-1776 you pulled 9-1766, a Detroit inbound trailer. By not properly checking your equipment, you delayed the movement of 9-1776 to destination.

As you are in violation of Uniform Rules and Regulations, Rule 5, Section B - Unnecessary Delaying of Load or Equipment, you are issued this letter. This is your second infraction of this rule in nine months. You are therefore subject to a three day layoff. Layoff to begin 0001 hours Wednesday, March 8, 1978, and end 72 hours later. Should you be out of town, the 72 hours will begin after your arrival back into Detroit on the 8th.

Any further instances of this nature will be dealt with in the appropriate manner.

Very truly yours,

CONSOLIDATED FREIGHTWAYS

R. A. Christian
Dispatch Operations Manager

RAC/cll

cc: M. McDorman, CAH

Plaintiff's Exhibit No. 171

S. Monforte, DET
E. Grayhek, Local #299, Certified Mail
Personnel File, Certified Mail

Plaintiff's Exhibit No. 172

March 4, 1978

Mr. W. M. King
827 Girard Road
Sherwood, MI 48066

Dear Mr. King:

This letter is issued under Article 46 of the Central States Over-The-Road Supplemental Agreement for the following:

As of 1430 hours, Thursday, March 2, 1978, you have failed to turn in your logs for February 21 through February 28, 1978. You are in direct conflict with Motor Carrier Safety Regulations, Section 295.8, subsection (R) - Filling Driver's Log. You are therefore in violation of Uniform Rules and Regulations, Rule 4, Section A - Failure to Properly Make Out Reports and Trip Sheets.

Turn in your logs on a more timely basis. I feel you have been afforded every consideration in regards to your logs.

Very truly yours,

CONSOLIDATED FREIGHTWAYS

R. A. Christian
Dispatch Operations Manager

RAC/cll

cc: S. Monforte, DET
M. McDorman, CAH
J. Biller - CAH
E. Grayhek, Local #299, Certified Mail
R. Saunders, Steward
Personnel File, Certified Mail

Plaintiff's Exhibit No. 173

February 17, 1978

Mr. W. M. King
827 Girard Road
Sherwood, MI 48066

Dear Mr. King:

This letter is issued under Article 46 of the Central States Over-The-Road Supplemental Agreement for the following:

On Wednesday, February 15, 1978, at 1037 hours, you were contacted for work by the on duty dispatcher. Your departure time would have been 1237 hours, but you did not show up for work. At 1433 hours, you were taken off the board for 24 hours, as you had still not shown for dispatch.

You are therefore in violation of Uniform Rules and Regulations, Rule 6, Section B.

Therefore, per Uniform Rules and Regulations, Rule 7, Section B, Penalty for three minor offences in a 60 day period, you are subject to a three day layoff. Layoff to begin at 0001 hours, Tuesday, February 21, 1978, and continue for 72 hours. If you are out of town on a trip, you will be off 72 hours after your return to Detroit in the 21st.

Any further instances of this nature will be handled in the appropriate manner.

Very truly yours,

CONSOLIDATED FREIGHTWAYS

R. A. Christian
Dispatch Operations Manager

RAC/cil

Plaintiff's Exhibit No. 173

cc: S. Monforte, DET
M. McDorman, CAH
E. Grayhek, Local #299, Certified Mail
R. Saunders, Steward
Personnel File, Certified Mail

Plaintiff's Exhibit No. 174

February 8, 1978

Mr. W. M. King
827 Girard Road
Sherwood, MI 48066

Dear Mr. King:

This letter is issued under Article 46 of the Central States Over-The-Road Supplemental Agreement for the following:

On Friday, February 3, 1978, at 0957 hours, you were contacted for work but you were not home. You were again contacted at 1017 and 1038 but your phone was busy. As you are in violation of Detroit Dispatch Rules and Regulations, Rule 3, Section B - Unavailability - you are issued this letter.

Any further instances of this nature will be dealt with in the appropriate disciplinary manner.

Very truly yours,

CONSOLIDATED FREIGHTWAYS

R. A. Christian
Dispatch Operations Manager

RAC/cll

cc: S. Monforte - DET
M. McDorman - CAH
E. Grayhek, Local #299, Certified Mail
R. Saunders, Steward
Personnel File, Certified Mail

Plaintiff's Exhibit No. 175

February 23, 1978

Mr. W. M. King
827 Girard Road
Sherwood, MI

Dear Mr. King:

This letter is issued under Article 46 of the Central States Over-The-Road Supplemental Agreement for the following:

On Wednesday, January 18, 1978, you were dispatched on a Detroit - Kalamazoo turn at 1420 hours. You were to pick up 29-2036 and 9-5083 in Kalamazoo and bring to Detroit. However, you brought back the same units you took into Kalamazoo, 9-4021 and 29-2476.

By not checking your equipment with your running orders, you needlessly delayed the movement of freight.

As you are in violation of Uniform Rules and Regulations, Rule 5, Section B - Unnecessary Delaying of Load or Equipment, you are issued this letter.

Any further infractions of this nature will result in additional disciplinary action.

Very truly yours,

CONSOLIDATED FREIGHTWAYS

R. A. Christian
Dispatch Operations Manager

RAC/cll

cc: S. Monforte, DET
M. McDorman, CAH

Plaintiff's Exhibit No. 175

**E. Grayhek, Local #299, Certified Mail
R. Saunders, Steward
Personnel File, Certified Mail**

Plaintiff's Exhibit No. 176

December 14, 1977

Mr. W. King
827 Girard Road
Sherwood, MI

Dear Mr. King:

This is a warning letter as set forth in Article 46 of the Central States Over-The-Road Supplemental Agreement for the following:

On Monday, December 12, 1977 in Aurora, Illinois, at 2300 hours, you were called for work for 0100 dispatch. You did not depart until 0202 hours, one hour late.

As you are in violation of Uniform Rules and Regulations, Rule 6, Section C, Reporting Late for Work, you are issued this warning letter.

Any further occurrences of this nature will result in further disciplinary action. Govern yourself accordingly.

Very truly yours,

CONSOLIDATED FREIGHTWAYS

R. A. Christian
Dispatch Operations Manager

RAC/cll

cc: S. Monforte, DET
M. McDorman, CGO
E. Grayhek, Local #299, Certified Mail
J. Ellis, AUR
R. Saunders, Steward
Personnel File, Certified Mail

Plaintiff's Exhibit No. 177

December 1, 1977

Mr. W. King
827 Girard Road
Sherwood, MI

Dear Mr. King:

This letter is being issued under Article 46 of the Central States Over-The-Road Supplemental Agreement for the following offense:

On Thursday, (line drawn through - hand-written Sun), November 23, (crossed out - 27), 1977, at 2324 hours, you were contacted for work by Detroit dispatch. You did not arrive for departure until 1025 hours November 28. As you are in violation of Uniform Rules and Regulations, Rule 6, Section C, Reporting Later for Work, you are issued this letter.

Any further occurrences of this nature will result in further disciplinary action. Govern yourself accordingly.

Very truly yours,

CONSOLIDATED FREIGHTWAYS

R. A. Christian
Dispatch Operations Manager

RAC/cil

cc: S. Monforte, DET
M. McDorman, CGO
E. Grayhek, Local #299, Certified Mail
R. Saunders, Steward
Personnel File, Certified Mail

Plaintiff's Exhibit No. 178

December 6, 1977

Mr. W. King
827 Girard Road
Sherwood, Michigan

Dear Mr. King:

This is a retraction of a letter issued you on November 22, 1977.

Very truly yours,

CONSOLIDATED FREIGHTWAYS

R. A. Christian
Dispatch Operations Manager

RAC:jn

cc: S. Monforte, Terminal Manager
M. McDorman, CGO
E. Grayhek, Local #299, Certified Mail #21251
R. Saunders, Steward
Personnel File, Certified Mail #21250

Plaintiff's Exhibit No. 179

November 22, 1977

Mr. W. King
827 Girard Road
Roseville, MI 48066

Dear Mr. King:

This is a warning letter as set forth in Article 46 of the Central States Over-The-Road Supplemental Agreement for the following:

On Thursday, November 17, 1977, at 0115 hours, you were called for work for 0315 dispatch in Aurora, Illinois. You did not depart until 0449 hours.

As you are in violation of Uniform Rules and Regulations, Rule 6, Section (C), Reporting Late for Work, you are issued this warning letter.

Any further occurrences of this nature will result in further disciplinary action. Govern yourself accordingly.

Very truly yours,

CONSOLIDATED FREIGHTWAYS

R. A. Christian
Dispatch Operations Manager

RAC/cll

cc: S. Monforte, DET
M. McDorman, CGO
E. Grayhek, Local #299, Certified Mail
C. Schmalz, AUR
R. Saunders, Steward
Personnel File, Certified Mail

Plaintiff's Exhibit No. 180

December 1, 1977

Mr. W. King
827 Girard Road
Sherwood, MI

Dear Mr. King:

This letter is being issued under Article 46 of the Central States Over-The-Road Supplemental Agreement for the following offense:

On Sunday, November 27, 1977, at 2324 hours, you were contacted for work by Detroit dispatch. You did not arrive for departure until 1025 hours November 28. As you are in violation of Uniform Rules and Regulations, Rule 6, Section C, Reporting Late for Work, you are issued this letter.

Any further occurrences of this nature will result in further disciplinary action. Govern yourself accordingly.

Very truly yours,

CONSOLIDATED FREIGHTWAYS

R. A. Christian
Dispatch Operations Manager

RAC/cll

cc: S. Monforte, DET
M. McDorman, CGO
E. Grayhek, Local #299, Certified Mail
R. Saunders, Steward
Personnel File, Certified Mail

Plaintiff's Exhibit No. 116

January 6, 1978

Mr. Jesse Becton - 42823
11726 Toods Lane
Whitmore Lake, MI 48189

Dear Mr. Becton:

This letter is issued under Article 46 of the Central States Over-The-Road Supplemental Agreement for the following:

On January 5, 1979, you were broke down while enroute to Akron, Ohio. You called Chicago, Illinois, enroute Repair Center and were put on hold while the controller handled another breakdown. You either hung the phone up or it was disconnected, but you never called back. You then called Detroit at approximately 0200 hours and talked to the on duty dispatcher, Karl Williams. He instructed you to call back in one hour, in which you never did. Consequently, nobody knew where you were at until you finally called Chicago again at approximately 0500 hours. Therefore, you are being issued this letter under Uniform Rules and Regulations, Article 3, Section G.

Since this is your second offence since August, you are hereby terminated from employment at Consolidated Freightways.

Respectfully,

CONSOLIDATED FREIGHTWAYS

R. J. Saunders
Linehaul Operations Manager

RJS/cll

cc: S. Monforte, DET
M. McDorman, CAH
E. Grayhek, Local #299, Certified Mail - 42824

Plaintiff's Exhibit No. 116

**B. Russell, Steward
File, Certified Mail**

Plaintiff's Exhibit No. 25

September 30, 1976

Mr. Robert Glisson
26021 Lori
Taylor, Michigan 48180

Dear Mr. Glisson:

This letter is being issued in accordance with Article 46 of the Central States Over the Road Supplemental Agreement for the following offense:

On Wednesday, September 29, 1976, you were dispatched to Kalamazoo, Michigan with units 16-3169, 29-2322 and 29-2007. You were then dispatched back to Detroit with units 16-3169, 9-1152 and 29-5650. Upon arriving in Detroit the on-duty dispatcher began filling in your pay orders sending you on a Flint turn. At this time you refused to turn Flint and left the dispatch window.

This 278 mile run was completed in 6 hours leaving you with nine hours left to work on this tour of duty. Rule T, Section (B) of Detroit Dispatch Rules states drivers will be dispatched on as many runs as their hours permit in a single tour of duty. As you refused to follow the instructions of the on-duty dispatcher, you are in violation of Uniform Rules and Regulations, Rule 3, Section (G) Disobeying of orders, and are hereby issued this reprimand.

In the event of any future occurrences, I will have no recourse but to take further disciplinary action, up to and including subsequent discharge.

Very truly yours,

CONSOLIDATED FREIGHTWAYS

R. A. Christian,
Linehaul Opers. Manager

Plaintiff's Exhibit No. 25

RAC:jm

cc: M. Foster, Terminal Manager, DET
R. Proctor, Local 299, Certified Mail #20029
M. McDorman, CGO
R. Wesner, Steward
Personnel File, Certified Mail #20028

Plaintiff's Exhibit No. 26

March 29, 1977

Mr. Robert E. Glisson
26021 Lori
Taylor, Michigan 48180

Dear Mr. Glisson:

This letter is being issued in accordance with Article 46 of the Central States Over-the-Road Supplemental Agreement for the following offense.

On March 22, 1977, you were given instructions to park your unit in the Outbound Ready Line when you arrived in Akron, Ohio. This unit was found parked the wrong way in the staging area. This caused unnecessary delay and expense to Consolidated Freightways as the unit had to be found and moved to the correct area.

As you are in violation of Uniform Rules and Regulations, Rule 3 Section (G), you are issued this warning letter. This letter is to be construed as your written warning for failure to follow instructions and future violations of this nature will result in further disciplinary action.

Your cooperation is expected in this concern.

Very truly yours,

CONSOLIDATED FREIGHTWAYS

s/ R. A. Christian
R. A. Christian,
Dispatch Operations Manager

RAC:jm

cc: S. Monforte, Terminal Manager, DET
M. McDorman, CGO
D. Oliver, AKR
R. Proctor, Local #299, Certified Mail #20654
R. Wesner, Steward
Personnel File, Certified Mail #20653